

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPT.
Civil Action No.:

Tropical Fay’s – II, LLC, and]
Tropical Foods International, Inc.,]
Plaintiffs,]
v.]
City of Boston Zoning Board of Appeals,]
Sherry Dong, Norm Stenbridge,]
Giovanny Valencia, Raheem Shepard,]
Hansy Better Barraza, Alan Langham,]
And Katie Whewell, as they are the Members of]
The City of Boston Zoning Board of Appeals, and]
Madison Trinity 2085 Development, LLC,]
Defendants.]

COMPLAINT

INTRODUCTION

This is a zoning appeal pursuant to Section 11 of Chapter 665 of the Acts of 1956 (the “Enabling Act”) for judicial review brought by abutting ground tenants and occupants to challenge a Decision (the “ZBA Decision”) of Defendant City of Boston Zoning Board of Appeals (the “ZBA”) granting a variance from the dimensional requirements of the zoning regulations of the Boston Redevelopment Authority (the “Variance”). The Variance was granted to Defendant Madison Trinity 2085 Development, LLC to construct a new ten (10) story building with ninety-six (96) residential units, above ground parking, and an office use “work-bar” on a newly consolidated parcel historically consisting of four (4) parcels of land, now commonly known as 2085 Washington Street, located in the Dudley Square Economic Development Area (the “Property”). As is more fully discussed herein, the ZBA Decision, filed with the City of Boston Inspectional Services Department on May 19, 2023, is not supported by any factual findings, not supported by substantial evidence, based on legally untenable grounds, is arbitrary, whimsical, capricious, and is in excess of the ZBA’s authority. Accordingly, Plaintiffs request that the ZBA Decision and the Variances be annulled.

Parties

1. Plaintiff Tropical Fay's - II, LLC is a limited liability company organized under the laws of the Commonwealth of Massachusetts with a principal office located at 450 Melnea Cass Blvd., Roxbury, MA 02119 and is a direct abutter to the Property.
2. Plaintiff Tropical Foods International, Inc. is a corporation organized under the laws of the Commonwealth of Massachusetts with a principal office located at 450 Melnea Cass Blvd., Roxbury, MA 02119 and is a direct abutter to the Property.
3. Defendant City of Boston Zoning Board of Appeals and its individual members Sherry Dong, Norm Stenbridge, Giovanni Valencia, Raheem Shepard, Hansy Better Barraza, Alan Langham, and Katie Whewell (the "Board"), who granted the relief subject of this action, is a duly constituted municipal board and the permit granting authority under Section 8 of the Enabling Act with respect to the grant and denial of variances and special permits in the City of Boston. The ZBA has a usual place of business at 1010 Massachusetts Avenue, 4th Floor, Boston, Massachusetts 02118.
4. Madison Trinity 2085 Development, LLC ("Madison Trinity") is a limited liability company organized under the laws of the Commonwealth of Massachusetts with a principal office located at 184 Dudley Street, Roxbury, MA 02119. Madison Trinity has been designated by the BPDA to be the lessee and developer of the Property.
5. Madison Trinity is the applicant for the Variance by virtue of it being the lessee and designated developer of the Property. Tropical-Melnea Holdings, LLC is a tenant of Madison Trinity at the Property.
6. Tropical Fay's - II, LLC is the sub-tenant of Tropical-Melnea Holdings, LLC.
7. Tropical Foods International, Inc. is the sub-sub tenant of Tropical Fay's II, LLC.

Jurisdiction

8. The ZBA Decision granting the Variance to Madison Trinity was filed with the Commissioner of the Inspectional Services Department of the City of Boston on May 19, 2023 (the “ZBA Decision”). A certified copy of the ZBA Decision is attached hereto as Exhibit A.
9. This court has jurisdiction over this case pursuant to Section 11 of the Enabling Act.
10. The ZBA Decision exceeds the authority of the Board.
11. The Plaintiffs in this action are direct abutters that have been aggrieved by the decision of the Board.
12. Timely notice of this Complaint has been given to the Board.

Facts

13. The locus of this matter is a newly consolidated parcel historically consisting of four (4) parcels of land, now commonly known as 2085 Washington Street, located in the Dudley Square Economic Development Area (the “Property”).
14. Madison Trinity seeks to construct a one hundred and nineteen (119) foot tall residential mixed used building with 96 rental units and a floor area ratio (FAR) that is in excess of the Maximum FAR of 2 that allowed under the current zoning regulations (the “Project”).
15. The Plaintiffs are direct abutters as ground and operating tenants and are aggrieved by the ZBA Decision and will suffer particularized harm as a result of the construction of the Project.
16. Plaintiffs will be harmed by the Project because of, inter alia, increased traffic from the ten-story residential building consisting of ninety-six units, increased unauthorized parking

in the Plaintiffs' parking lot, decreased sight lines for the Plaintiffs' customers, offensive shadows from the building, and diminution in property value.

17. The maximum allowed building height for the Property under the current zoning regulations is fifty-five (55) feet. The maximum allowed FAR for the Property is 2. A true and accurate copy of Section 11 of Article 50 of the Boston Zoning Code (the "Zoning Code") is attached hereto as Exhibit B.

18. Madison Trinity filed an application for a variance for relief from the dimensional requirements of the Zoning Code" pursuant to Article 7, Section 7-3 for a variance of the Dimensional Regulations of Article 50, Section 11.

19. Article 7, Section 7-3 of the Zoning Code states in relevant part:

The Board of Appeal shall grant a variance only if it finds that all of the following conditions are met:

(a) That there are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the lot, or exceptional topographical conditions thereof) which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this code would deprive the appellant of the reasonable use of such land or structure;

(b) That, for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variance is necessary for the reasonable use of the land or structure and that the variance as granted by the Board is the minimum variance that will accomplish this purpose;

(c) That the granting of the variance will be in harmony with the general purpose and intent of this code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

In determining its findings, the Board of Appeal shall take into account:

- (1) the number of persons residing or working upon such land or in such structure;*
- (2) the character and use of adjoining lots and those in the neighborhood; and*
- (3) traffic conditions in the neighborhood.*

20. Section 7-3 of Article 7 of the Zoning Code requires the Board, when granting a variance, to make findings that fully describe the special circumstances or conditions of the land or structure for which the variance is sought, that are peculiar to the land or structure but not generally the neighborhood.
21. A public hearing was held on Tuesday, April 11, 2023.
22. The Plaintiffs appeared in opposition to the Project. Plaintiff Tropical Foods International, Inc. operates Tropical Foods market, which is located on the parcel contiguous with the Project.
23. Plaintiff shares and has an exclusive right to use at least ninety-one (91) parking spaces in the parking lot located on a portion of Parcel 10, Southwest Corridor, Boston, MA (the “Parking Lot”) as the ultimate tenant of Madison Tropical Market, LLC.
24. On information and belief, Madison Park Development Corporation is an entity affiliated with the Defendant applicant Madison Trinity.
25. On information and belief, Madison Trinity, an entity affiliated with Madison Tropical Market, LLC, intends to allow tenants of the Project to utilize the Parking Lot, or at the very least, has refused to take action to prevent said tenants from doing so.
26. Madison Tropical Market, LLC is party to a Construction, Operating Reciprocal Easement and Restriction Agreement dated December 20, 2013 (the “COREA”). A copy of the COREA is attached as Exhibit C.
27. Tropical Foods International is a party with Madison Park Development Park Corporation (“MPDC”) to an agreement titled, “Madison Tropical Parcel 10 Memorandum of Understanding Amended and Restated” dated July 21, 2011 (the “MOU”). A copy of the MOU is attached as Exhibit D.

28. Tropical Foods International is a party with MPDC, and others, to an agreement titled, “Agreement Regarding Continuing Use and Development of Parcel 10 and 2101 Washington Street” dated December 30, 2013 (the “Continuing Use and Development Agreement”). A copy of the Continuing Use and Development Agreement is attached as Exhibit E.
29. Under the MOU, the COREA, and the Continuing Use and Development Agreement, Plaintiffs have the exclusive right to use at least 91 parking spaces on a portion of the property that is the subject of this action.
30. The MOU specifically states that the development will consist of “*New construction on Parcel 10, located at the corner of Melnea Cass and Washington Street, consisting of approximately 59,000 GSF of various uses including ground floor retail of roughly 11,000 GSF and office uses on 3.5 floors above totaling about 48,000 GSF the “Building B” - alternative plans for Building B include a mix of residential and office space on upper floors as well as solely a residential use on upper floors...*”
31. Based on the specific language of the MOU, which was amended and restated as of July 21, 2011, the Project was planned to be a 59,000 GSF building on 4.5 floors. Alternative uses of the building contemplated residential use with the same gross foot allocation.
32. There has been no change in the condition of the Property since the MOU was entered into back in 2011, when the construction of a much smaller residential multifamily housing project was contemplated, and Madison Trinity has presented no evidence to the contrary.
33. There has been no showing by Madison Trinity, nor any findings by the Board, consistent with the applicable Zoning Code, to justify the granting of a variance for the construction of a 10-story multifamily project.

34. At the hearing, Madison Trinity failed to assert the conditions required for the Board to grant a variance under Article 7 of the Zoning Code.
35. At the hearing, Madison Trinity failed to address or offer testimony that special circumstances or conditions apply to the land for which the variance is sought that would deprive it of the reasonable use of the land.
36. At the hearing, Madison Trinity failed to address or offer testimony as to circumstances or conditions about the land or structure for which the variance is sought, that are peculiar to the land or structure but not the neighborhood, are such that the construction of a 55-foot-high building with an FAR of 2 would deprive the appellant of the reasonable use of such land or structure.
37. At the hearing, Madison Trinity failed to address or offer testimony of “practical difficulty and demonstrable and substantial hardship” and granting of the variances is necessary for the “reasonable use of the land” as required under Section 7-3 of the Zoning Code.
38. At the hearing, Madison Trinity failed to address or offer testimony that the granting of the variances will be in “harmony with the general purpose and intent of this code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare” as required under Section 7-3 of the Zoning Code.
39. At the hearing, Madison Trinity failed to address or offer testimony on how the variance sought is the minimum variance that will allow reasonable use of the land.
40. Madison Park has offered no evidence that the land cannot be used reasonably without the requested relief.

41. On May 16, 2023, the ZBA issued the ZBA Decision, pursuant to a vote of all members present (with one abstaining), granting a variance under Article 7, Section 7-3 of the Zoning Code for the construction of a ten (10) story building with an FAR in excess of 2.
42. In granting the requested variances, specifically with regard to building height and FAR under Article 50, Section 11 of the Zoning Code, the Board failed to apply the appropriate standards set forth in Article 7 of the Zoning Code. The Board made no findings of fact to support the conclusions in the Decision. Instead, the Board merely recited Article 7-3 of the Zoning Code and reached its conclusions without any factual determination that Madison Trinity satisfied its burden set forth in Article 7 of the Zoning Code.
43. The ZBA made the following findings (the “Findings”) with absolutely no explanation or substantiation:

Finding 1: Appellant contends that the Proposed Project is situated on an irregularly shaped urban infill lot with inconsistent grading. Without the requested relief, the Appellant would be unable to build the proposed multifamily housing project.

Finding 2: Appellant contends that, as described below, the Proposed Project uses constitute reasonable uses of the Property, which will be beneficial to the neighborhood and better uses than the existing use of the Property as a parking lot. Additionally, the requested variances reflect a thoughtful project design that minimizes deviations from the Code. The requested variances are the minimum variances necessary to accommodate the Proposed Project.”

Finding 3: Appellant contends the City of Boston is currently facing a housing crisis, and the Proposed Project will provide desperately needed affordable housing. Additionally, Appellant contends that the benefits of the Proposed Project include:

- *The creation of 64 critically needed income-restricted rental units, ranging in affordability between 30% and 80% AMI; 32 homeownership units, ranging in affordability between 80% and 120% AMI, including no more than 2*
- *market rate units; for a total of 96 new housing units.*
- *Developing mixed-income housing along a main artery and close to public transit.*

- *Activating an under-utilized site -"development without displacement" (Property currently used as parking lot).*
- *Creation of approximately 2,400 square feet of community space.*
- *Generating increased tax revenues for the City of Boston.*
- *Creation of construction jobs.*
- *Improve the safety and visual appearance of the site and immediate area*
- *through improved sidewalk, street trees, landscaping and lighting.*
- *Supporting Boston's resiliency, sustainability, and carbon neutral 2050 goals.*

44. The Findings nearly mimic the required findings for the grant of any special permit pursuant to Article 7, Section 7-3 of the Zoning Code and are therefore legally deficient.

See Josephs v. Brookline Bd. Of Appeals, 362 Mass. 290 (1972); Warren v. Zoning Bd. of Appeals of Amherst, 383 Mass. 1, 10 (1981).

45. The Findings fail in all respects to address the specific requirements under Article 7, Section 7-3 of the Zoning Code upon which a variance may be granted. There is no evidence to support the following findings (stated in full, supra): Finding 1 (whether the parcel is irregularly shaped, whether there is inconsistent grading, and without the relief the proposed project could not be built); Finding 2 (the variances requested are the minimum necessary to accommodate the project); and Finding 3 (the city of Boston is currently facing a housing crisis).

46. First, with respect to Finding 1, the ZBA decision is entirely devoid of any reasoning or statement to the effect of what "special circumstances or conditions" the ZBA found to support the granting of the variance. There is nothing about the shape of the lot, the topography, or the soil conditions that identifies any "special condition", nor any explanation whatsoever about how those conditions, if they even exist, differ from those found generally in the neighborhood. Even if there were evidence submitted to the Board regarding these special circumstances, the ZBA would still need to make findings, which

it has not done, that such conditions are peculiar only to *this* parcel and not to the neighborhood generally as well as to how denying the requested height and FAR variance, which would still allow Madison Trinity to construct a building 55 feet high with an FAR of 2, would “deprive the appellant of the reasonable use of such land or structure”.

47. There is no evidence of what the FAR of the proposed 119-foot building will be, and by how much the FAR will exceed the maximum allowable ratio of 2.

48. Second, with respect to Finding 2, there are no findings by the ZBA that cite the demonstrable and substantial hardship that Madison Trinity would suffer, nor, even if such evidence existed, explain how the requested variances minimize deviations from the Zoning Code. The ZBA made absolutely no findings assessing how more than doubling the height of the project from 55 feet to 119 feet “minimize deviations from the code”. There is nothing in the record about how and/or why a building of fifty-five (55) feet high would not be sufficient, nor why more than doubling the height is the minimum deviation from the Zoning Code necessary to accommodate the reasonable use of the land (not the Proposed Project as was erroneously stated in the findings).

49. Lastly, with respect to Finding 3, the ZBA recognized a desperate need for affordable housing and recited Madison Trinity’s purported benefits of the Project. The Board did not make any findings about how doubling the height of the building and increasing the FAR “is in “harmony with the general purpose and intent of the code and not injurious to the neighborhood”. The Code sets a maximum allowable height of 55 feet. The Board allowed this Project more than double that to 119 feet without any specific findings about how doing so is not injurious to the neighborhood.

50. The Project will be injurious to the neighborhood and the Plaintiff. There will be shadows and sight lines that will be significantly impacted by the Project. Furthermore, a building twice the allowable size will necessarily have double the amount of traffic and people using it, as well as adverse impacts on the available parking, which is already insufficient.
51. The decision of the Board to grant these variances (i) exceeded its authority as set forth in Section 11 of the Enabling Act, (ii) was not in compliance with the Zoning Code (iii) misapplied the necessary standards for the granting of these variances and (iv) failed to make any independent findings of fact or grounds for its decisions.
52. Accordingly, the Findings in the ZBA Decision are legally untenable, arbitrary, capricious, and whimsical and as such the relief granted by the Board should be annulled.

Conditions are Legally Insufficient

53. The ZBA may attach such conditions and safeguards as it deems necessary to assure harmony with the Zoning Code, including regulating access to drives and other traffic features, and the requirements off-street parking and other special features beyond the minimum required. See Article 7, Section 7-4.
54. The ZBA did not impose any conditions whatsoever on the Project, despite the Plaintiffs' protests that its parking lot rights are exclusive and may not be used by anyone associated with the Project, and the applicant's intentional misrepresentation at the public hearing that the Plaintiffs' private and exclusive parking is available for use by anyone.
55. The Board's failure to impose any conditions is deficient as a matter of law and does not provide sufficient protection to the Plaintiffs, are legally untenable, arbitrary, capricious, and whimsical.

56. The decision of the Board to grant these variances exceeded its authority as set forth in Section 11 of the Enabling Act, was not in compliance with the Zoning Code and misapplied the necessary standards for the granting of these variances and by failing to make any independent findings of fact or grounds for its decisions.
57. Accordingly, the Findings in the ZBA Decision are legally untenable, arbitrary, capricious, and whimsical and as such the relief granted by the Board should be annulled.

CLAIM FOR RELIEF

Count I

(Annulment of the ZBA Decision Granting a Variance)

58. Plaintiffs re-allege and incorporate by reference herein the allegations set forth in the previous paragraphs of this Complaint.
59. The decision of the Board was in error for the reasons set forth herein and the Board failed to make independent and necessary findings required under the Zoning Code to support its decision.
60. Article 50, Section 11 of the Zoning Code limits the height of buildings that can be constructed on the property to 55 feet. ZBA failed to make detailed findings, as required under Article 7, Section 7-3 of the Zoning Code, as to:
- a. What circumstances or conditions about the land or structure for which the variance is sought, that are peculiar to the land or structure but not the neighborhood, are such that the construction of a 55-foot-high building with an FAR of 2 would deprive the appellant of the reasonable use of such land or structure;

- b. What is the practical difficulty and demonstrable and substantial hardship the applicant faces that makes the granting of the variance necessary for the reasonable use of the land or structure;
- c. How is the variance granted by the Board the minimum variance that will accomplish this purpose;
- d. How is the variance in harmony with the general purpose and intent of this code, and not injurious to the neighborhood or otherwise detrimental to the public welfare; and

61. Article 50, Section 11 of the Zoning Code limits the FAR to 2.0. The ZBA failed to make detailed findings, as required under Article 7, Section 7-3 of the Zoning Code, as to:

- a) What circumstances or conditions about the land or structure for which the variance is sought, that are peculiar to the land or structure but not the neighborhood, are such that the construction of a 55 foot high building with an FAR of 2 would deprive the appellant of the reasonable use of such land or structure;
- b) What is the practical difficulty and demonstrable and substantial hardship the applicant faces that makes the granting of the variance necessary for the reasonable use of the land or structure;
- c) How is the variance granted by the Board the minimum variance that will accomplish this purpose;
- d) How is the variance in harmony with the general purpose and intent of this code, and not injurious to the neighborhood or otherwise detrimental to the public welfare; and

62. The conclusion by the Board, though not expressed or in the record of evidence presented to it, that there were special circumstances or conditions applying to the Property that are peculiar to the subject property but not the neighborhood and that these circumstances or conditions are such that the application of the relevant provisions of the Zoning Code would in some way deprive Madison Trinity of a reasonable use of the Property is in error and wholly unsupported by any evidence in the record of the Board. The conclusion of the Board, though not expressed or in the record of evidence presented to it, that special circumstances or conditions apply to the Property that would deprive Madison Trinity of a reasonable use of the Property if the variances under Article 50 Section 11 were not granted was wholly in error and not supported by any evidence in the record.
63. The conclusion of the Board, though not expressed or in the record of evidence presented to it, that Madison Trinity would suffer demonstrable and substantial hardship if the variances under Article 50 Section 11 were not granted was wholly in error and not supported by any evidence in the record.
64. The ZBA Decision is legally deficient, arbitrary, capricious, and unreasonable and in excess of the ZBA's authority insofar as the ZBA Decision cites absolutely no evidence to support its Findings.
65. The ZBA Decision is legally deficient, arbitrary, capricious, and unreasonable and in excess of the ZBA's authority insofar as the Conditions imposed on the Project are legally deficient and inadequate to protect the legitimate interests of Plaintiffs.
66. For the reasons set forth herein the decision of the Board is flawed and should be annulled in its entirety.

WHEREFORE, Plaintiffs request that the Court grant the following relief:

1. Permanently restrain, enjoin and annul the decision of the Zoning Board of Appeals of the City of Boston as it relates to 2085 Washington Street, Boston, Massachusetts.
2. Hear all pertinent evidence, determine the facts and **annul the ZBA Decision and the Special Permit**; and
3. Award the Plaintiffs reasonable costs in accordance with Section 11 of the Enabling Act and their reasonable attorneys fees to the extent permissible by law; and
4. Grant such other and further relief as justice and equity may require.

Respectfully Submitted,
Plaintiff,
Tropical Fay's – II, LLC and Tropical – Melnea
Holdings, LLC, and Tropical Foods International,
Inc.,
By its attorneys,

/s/ SCOTT D. FORD

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Date: June 6, 2023

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPT.

Tropical Fay’s – II, LLC, and]
Tropical Foods International, Inc.,]
Plaintiffs,]
v.]
City of Boston Zoning Board of Appeals,]
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And Katie Whewell, as they are the Members of]
The City of Boston Zoning Board of Appeals, and]
Madison Trinity 2085 Development, LLC,]
Defendants.]

Civil Action No.: _____

Exhibit A



City of Boston
Board of Appeal

**NOTICE OF DECISION
CASE NO. BOA1380087
PERMIT # ERT1006156
APPEAL SUSTAINED**

In reference to the appeal of

Madison Trinity Development LLC

Concerning the premises located at

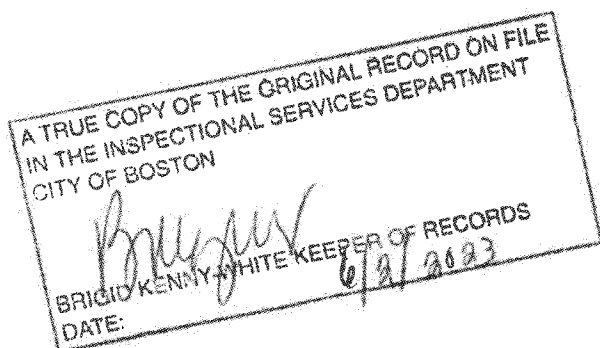
2085 Washington Street, Ward 09

for relief from the provisions of the Zoning Act, Ch. 665, Acts of 1956, as amended, in this specific case, I beg to advise that the petition has been granted.

The Board's decision has been filed in the office of the Commissioner of the Inspectional Services Department, 1010 Massachusetts Avenue, Fourth Floor, Boston, MA 02118, and is open for public inspection. A copy of the decision is available on the Board's website at <https://www.boston.gov/departments/inspectional-services/zoning-board-appeal-decisions>. The decisions are organized by filing date.

Date of filing of this decision with the Inspectional Services Department was May 19, 2023.

Please be advised, this decision of the Board has been reviewed and signed electronically by the signing Board Members. The addition of the certification of the Executive Secretary to the signature page attests that each Board Member who has signed this decision electronically has had an opportunity to review the written decision and has given his or her express written permission to the Executive Secretary to sign this decision electronically.



FOR THE BOARD OF APPEAL

/s/ Javier Salas

Javier Salas
Executive Secretary



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

April 11, 2023
DATE

Madison Trinity Development LLC

to provide relief from the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8,
at premises: **2085 Washington Street, Ward - 09**

Appellant requires relief from the Boston Zoning Code (see Acts of 1956, c. 665) in the following respect: **Variance, Conditional Use Permit, and /or other relief as appropriate.**

<u>Violation</u>	<u>Violation Description</u>	<u>Violation Comments</u>
Art. 50, Section 40.1	Street Wall continuity	to be determined at LPR
Art. 50, Section 11	Dimensional Regulations	Max. FAR allowed: 2
Art. 50, Section 11	Dimensional Regulations	Max. building height allowed: 55' Proposed: 119'
Art. 50, Section 11	Dimensional Regulations	Min. rear yard required: 20' Proposed: 0'
Art. 50 Sec.37	B'vd Planning Overlay District	
Art. 50 Sec. 38	Design Review	

Purpose: Erect new 10 story building with 96 Residential Units, Above ground parking, office use "work-bar". Building will seat within 4 lots: parcel 2124, parcel 2125, parcel 0902124010 and parcel 0902123010

In his formal appeal, Appellant states briefly in writing the grounds of and the reasons for his appeal from the refusal of the Building Commissioner, as set forth in papers on file numbered BOA-1380087 and made a part of this record.

In conformity with the law, the Board mailed reasonable notice of the public hearing to the Appellant and to the owners of all property deemed by the Board to be affected thereby, as they appeared on the then most recent local tax lists, which notice of public hearing was duly advertised in a daily newspaper published in the City of Boston, namely:

THE BOSTON HERALD on Tuesday, March 21, 2023

The Board reviewed relevant documents, photographs, and other submissions and conducted other reviews as necessary to determine the location, layout, and other characteristics of the Appellant's land, the scope of its proposal, and the issues presented by the appeal. The Boston Planning and Development Agency was sent notice of the appeal by the Building Department and the legal required period of time was allotted to enable the BPDA to render a recommendation to the Board, as prescribed in the Code.

After hearing all the facts and evidence presented at the public hearing held on Tuesday, April 11, 2023 in accordance with notice and advertisement aforementioned, the Board finds as follows:

The Appellant appeals to be relieved of complying with the aforementioned terms of the Boston Zoning Code, all as per Application for Permit# ERT1006156 and September 27, 2019 plans submitted to the Board at its hearing and now on file in the Building Department.

A TRUE COPY OF THE ORIGINAL RECORD ON FILE
IN THE INSPECTORIAL SERVICES DEPARTMENT
CITY OF BOSTON

Brigid Kennedy White
BRIGID KENNY WHITE, KEEPER OF RECORDS
DATE: 6/2/2023



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

2085 Washington Street, Ward 09
BOA1380087
Date of Hearing: April 11, 2023
Permit Application: ERT1006156
Page: #2

This appeal by Madison Trinity 2085 Development LLC ("Appellant") seeks permission to construct a new ten (10) story mixed-use building, with ninety-six (96) residential units, including rental apartments and for-sale condominium units, commercial space, and accessory below ground parking (the "Proposed Project") on a newly consolidated parcel consisting of four (4) historic parcels: parcel 2124, parcel 2125, parcel 0902124010, and parcel 0902123010 (the "Property").

The appeal is necessary as the proposal requires relief from the terms of the Boston Zoning Code (Code). Specifically, the Appellant seeks the following variances from this Board in order to construct the Proposed Project:

1. Art. 50 Sec. 40.1 – Street wall continuity.
2. Art. 50 Sec. 11 – Excessive floor area ratio: 2.0 is allowed.
3. Art. 50 Sec. 11 – Maximum allowable height exceeded: 55' is allowed; approximately 119' is proposed.
4. Art. 50 Sec. 11 – Minimum rear yard required: 20' is allowed; approximately 0' is proposed.
5. Art. 50 Sec. 37 – Boulevard Planning Overlay District.
6. Art. 50 Sec. 38 – Design Review.

The proposed project will allow the Appellant to have reasonable use of the premises by constructing a new ten (10) story mixed-use building, with ninety-six (96) residential units, including rental apartments and for-sale condominium units, commercial space, and accessory belowground parking. The project is located in the Dudley Square EDA subdistrict of the Roxbury Neighborhood District, as shown on Map 6A-6C of the Zoning Code, which makes this project an appropriate use of the lot, that will not adversely affect the community or create detriment for abutting residents. For these reasons, the requested relief may be granted in harmony with the general purpose and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Appellant presents that the four current parcels constituting the Property are currently owned, respectively in fee by the Massachusetts Department of Transportation and the City of Boston.

PROPERTY COPY OF THE ORIGINAL RECORD ON FILE
 IN THE INSPECTION SERVICES DEPARTMENT
 CITY OF BOSTON

David Kenney
 DAVID KENNEY, WHITE KEEPER OF RECORDS
 DATE: 6/2/2023



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

2085 Washington Street, Ward 09
BOA1380087
Date of Hearing: April 11, 2023
Permit Application: ERT1006156
Page: #3

Redevelopment Authority (d/b/a Boston Planning and Development Agency), or ground leased from the Massachusetts Department of Transportation, to the Boston Redevelopment Authority (d/b/a Boston Planning and Development Agency), which has awarded development rights to Appellant or an affiliate after a public RFP process. Additionally, Appellant presents that the Property is currently used as a parking lot in the Dudley Square EDA subdistrict.

Appellant presents that the Proposed Project is subject to Large Project Review under Article 80B of the Code. The BPDA Board voted on May 12, 2022 to approve the Proposed Project and issue a Scoping Determination Waiving Further Review, and the Proposed Project will receive a Certification of Compliance with Article 80B in due course following the completion of the BPDA's design review.

On April 30, 2022, the Appellant filed a zoning permit set for the Proposed Project with the Inspectional Services Department ("ISD"). The application, numbered ERT1006156, was denied by ISD in a letter dated July 8, 2022 ("Refusal Letter"). The Appellant appealed to this Board seeking relief from ISD's refusal to grant the building permit needed for the Proposed Project.

After the Petitioner filed the appeal, the Board, in conformity with applicable law, mailed reasonable notice of the public hearing to the Petitioner and to the owners of all property deemed by the Board to be affected thereby, as they appeared in the then most recent local tax list. The notice of a public hearing was duly advertised in a daily newspaper published in the City of Boston in accordance with applicable law. The Board held a public hearing on the Appeal on April 11, 2023.

Certain of the Refusal Letter citations – specifically, items 1, 5 and 6 above – relate to design review. These aspects of design review were subsumed within the large project review process under Article 80.

Appellant contends that the requested relief will allow the Appellant to have full and reasonable use of the Property. Appellant contends that the construction will create much needed affordable family affordable rental and homeownership housing units at this location.

TRUE COPY OF ORIGINAL RECORD ON FILE
IN THE INSPECTIONAL SERVICES DEPARTMENT
CITY OF BOSTON
Bridget Kenney-White
BRIDGET KENNEY-WHITE, KEEPER OF RECORDS
DATE: 6/2/2023



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

2085 Washington Street, Ward 09
BOA1380087
Date of Hearing: April 11, 2023
Permit Application: ERT1006156
Page: #4


the housing creation and homelessness prevention goals of the City. Additionally, Appellant contends that the specific proposed uses at this location are appropriate and will not create any detriments.

At the hearing, a representative from the Mayor's Office of Neighborhood Services spoke on the community process and deferred judgment to the Board. Representatives of (i) the Mayor's Office of Housing, (ii) City Councilor Tania Fernandes Anderson, and (iii) City Councilor Michael Flaherty all spoke in support of the Proposed Project. A representative of the carpenters' union spoke in support of the Proposed Project. An abutter (Tropical Foods) voiced opposition to the Proposed Project and the Appellant agreed to continue a dialogue with such abutter. Additionally, there are letters of opposition on file with the Board. After consideration, the Board finds that the requested relief will have no negative impact on the surrounding area, and is in harmony with the general purpose and intent of the Zoning Code.

The Board of Appeal finds that all of the following conditions are met with respect to the requested variances:

- (a) That there are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the variances are sought (such as, but not limited to, the exceptional narrowness, shallowness or shape of the lot, or exceptional topographical conditions thereof), which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of the Zoning Code would deprive the appellant of the reasonable use of such land or structure.

Appellant contends that the Proposed Project is situated on an irregularly shaped urban infill lot with inconsistent grading. Without the requested relief, the Appellant would be unable to build the proposed multifamily housing project.

A TRUE COPY OF THE ORIGINAL RECORD ON FILE
IN THE INSPECTIONAL SERVICES DEPARTMENT
CITY OF BOSTON

BRIGIO KENNY WHITE, KEEPER OF RECORDS
DATE: 6/9/2023



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

2085 Washington Street, Ward 09
BOA1380087
Date of Hearing: April 11, 2023
Permit Application: ERT1006156
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- (b) That for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variances is necessary for the reasonable use of the land or structure and that the variances as granted by the Board are the minimum variances that will accomplish this purpose.

Appellant contends that, as described below, the Proposed Project uses constitute reasonable uses of the Property, which will be beneficial to the neighborhood and better uses than the existing use of the Property as a parking lot. Additionally, the requested variances reflect a thoughtful project design that minimizes deviations from the Code. The requested variances are the minimum variances necessary to accommodate the Proposed Project.

- (c) That the granting of the variances will be in harmony with the general purpose and intent of the Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Appellant contends the City of Boston is currently facing a housing crisis, and the Proposed Project will provide desperately needed affordable housing. Additionally, Appellant contends that the benefits of the Proposed Project include:

- The creation of 64 critically needed income-restricted rental units, ranging in affordability between 30% and 80% AMI; 32 homeownership units, ranging in affordability between 80% and 120% AMI, including no more than 2 market rate units; for a total of 96 new housing units.
- Developing mixed-income housing along a main artery and close to public transit.
- Activating an under-utilized site – “development without displacement” (Property currently used as parking lot).

A TRUE COPY OF THE ORIGINAL RECORD ON FILE
IN THE INSPECTORIAL SERVICES DEPARTMENT
CITY OF BOSTON

[Signature]
BRIGID KENNY-WHITE, KEEPER OF RECORDS
DATE: 6/2/2023



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

2085 Washington Street, Ward 09
BOA1380087

Date of Hearing: April 11, 2023

Permit Application: ERT1006156

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- Creation of approximately 2,400 square feet of community space.
- Generating increased tax revenues for the City of Boston.
- Creation of construction jobs.
- Improve the safety and visual appearance of the site and immediate area through improved sidewalk, street trees, landscaping and lighting.
- Supporting Boston's resiliency, sustainability, and carbon neutral 2050 goals.

The Board is of the opinion that all conditions required for the granting of variances under Article 7, Section 7-3 of the Zoning Code have been met, and that the varying of the terms of the Zoning Code as outlined above will not conflict with the intent and spirit of the Zoning Code.

A TRUE COPY OF THE ORIGINAL RECORD ON FILE
IN THE INSPECTIONAL SERVICES DEPARTMENT
CITY OF BOSTON

[Signature]
BRIAN KENNEDY WHITE, KEEPER OF RECORDS
DATE: 6/2/2023



City of Boston
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

2085 Washington Street, Ward 09
BOA1380087
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Therefore, acting under its discretionary power, the Board (the members and substitute member(s) sitting on this appeal) unanimously voted to grant the requested variances as described above, annuls the refusal of the Building Commissioner and orders him to grant a permit in accordance with this decision, with the following provisos which, if not complied with, shall render this decision null and void.

APPROVED AS TO FORM:

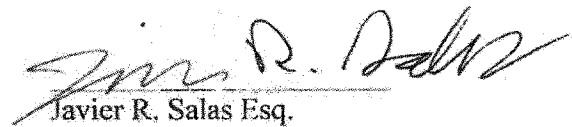

Assistant Corporation Counsel

PROVISO(S):

1) None.

Signed: May 16, 2023

With my signature, I certify that the signatories of this decision have given their express permission for electronic signature:


Javier R. Salas Esq.
Executive Secretary
Board of Appeal

/s/ Sherry Dong
Sherry Dong – Chair (Voted In Favor)
/s/ Norm Stembridge
Norm Stembridge – Secretary (Recused)
/s/ Giovanny Valencia
Giovanny Valencia (Voted In Favor)
/s/ Raheem Shepard
Raheem Shepard (Voted In Favor)
/s/ Hansy Better Barraza
Hansy Better Barraza (Recused)
/s/ Alan Langham
Alan Langham (Voted In Favor)
/s/ Katie Whewell
Katie Whewell (Voted In Favor)

IN THE COPY OF THE ORIGINAL RECORD ON FILE
IN THE INSPECTIONAL SERVICES DEPARTMENT
CITY OF BOSTON


BRIDGET KEENEY WHITE, KEEPER OF RECORDS
DATE: 6/2/2023

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPT.

Tropical Fay’s – II, LLC, and]
Tropical Foods International, Inc.,]
Plaintiffs,]
v.]
City of Boston Zoning Board of Appeals,]
Sherry Dong, Norm Stembridge,]
Giovanny Valencia, Raheem Shepard,]
Hansy Better Barraza, Alan Langham,]
And Katie Whewell, as they are the Members of]
The City of Boston Zoning Board of Appeals, and]
Madison Trinity 2085 Development, LLC,]
Defendants.]

Civil Action No.: _____

Exhibit B

Section 50-11. - Dimensional Regulations Applicable in EDAs.

Within the Greater Roxbury EDA, the maximum allowed Building Height is sixty-five (65) feet and the maximum allowed Floor Area Ratio is two (2). Within the Dudley Square EDA, the maximum allowed Building Height is fifty-five (55) feet and the maximum allowed Floor Area Ratio is two (2). The minimum allowed Lot Size, Lot Width, Lot Frontage, Front Yard, Side Yard, Rear Yard, and Usable Open Space are set forth in Table C of this Article.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPT.

Tropical Fay’s – II, LLC, and]
Tropical Foods International, Inc.,]
Plaintiffs,]

v.]

City of Boston Zoning Board of Appeals,]
Sherry Dong, Norm Stembridge,]
Giovanny Valencia, Raheem Shepard,]
Hansy Better Barraza, Alan Langham,]
And Katie Whewell, as they are the Members of]
The City of Boston Zoning Board of Appeals, and]
Madison Trinity 2085 Development, LLC,]
Defendants.]

Civil Action No.: _____

Exhibit C

**CONSTRUCTION, OPERATION, RECIPROCAL EASEMENT
AND RESTRICTION AGREEMENT**

This Construction, Operation, Reciprocal Easement and Restriction Agreement (this “**Agreement**”) dated as of December 30, 2013, is made by and among **Madison Tropical Market LLC**, a Massachusetts limited liability company with an address of 184 Dudley Street, Suite 102, Roxbury, MA 02119 (“**Lot A Lessee**”), **Madison Williams LLC**, a Massachusetts limited liability company having an address of 184 Dudley Street, Suite 102, Roxbury, MA 02119 (“**2101 Owner**”, the 2101 Owner and Lot A Lessee are hereinafter called the “**Participating Parties**”), the **Massachusetts Department of Transportation**, a public body politic and corporate created pursuant to Chapter 6C of the Massachusetts General Laws, as amended, having an address of 10 Park Plaza, Suite 4160, Boston, Massachusetts 02116 (“**MassDOT**”), and the **Boston Redevelopment Authority**, a public body politic and corporate organized and existing under Chapter 121B of the Massachusetts General Laws, as amended, having an address of One City Hall Square, 9th Floor, Boston, Massachusetts 02201 (the “**BRA**”).

RECITALS

- A The parties hereto are owners and lessees of contiguous parcels of land commonly known as 450 Melnea Cass Boulevard and 2083-2089 Washington Street in the Roxbury District of Boston (“**Parcel 10**”) and 2101-2115 Washington Street in the Roxbury District of Boston (“**2101 Washington**”), all as more particularly described below.
- B MassDOT is the owner of a portion of land situated within Parcel 10 (“**MassDOT Land**”), and the BRA is the owner of the remainder of Parcel 10 (“**BRA Land**”).
- C The BRA holds a leasehold interest in the MassDOT Land pursuant to a certain Parcel 10 North (Roxbury) Ground Lease dated as of December 30, 2013 by and between MassDOT as landlord and the BRA as tenant, a notice of which is to be recorded with the Suffolk County Registry of Deeds (the “**Registry**”) herewith. The MassDOT Land and BRA Land combined constitute the entirety of Parcel 10.
- D 2101 Owner is the owner of 2101 Washington pursuant to a certain deed from Fay’s Sons, LLC to be recorded herewith. 2101 Washington is more particularly described as “Lot 7” on a plan entitled “Subdivision Plan Parcel 10 Melnea Cass Boulevard Roxbury (Boston), MA”, Applicant/Owner Madison Park Development Corp., dated April 5, 2013, last revised June 12,

2013, prepared by Allen & Major Associates, Inc., recorded with Suffolk County Registry of Deeds in Plan Book 2013, Page No. ____ and filed with the Suffolk Registry District of the Land Court as Document No. _____ (the Registry of Deeds and the Registry District of the Land Court hereafter the “**Registry**”) (the “**Subdivision Plan**”).

- E The Lot A Lessee holds a leasehold interest in that portion of Parcel 10 commonly known as 450 Melnea Cass Boulevard and being Lots 5 and 6 on the Subdivision Plan (“**Lot A**”) pursuant to a Ground Lease-dated as of December 30, 2013 by and between the BRA as landlord and the Lot A Lessee as tenant, a notice of which is to be recorded with the Registry herewith (“**Lot A Lease**”).
- F On July 16, 2013, the BRA Board tentatively designated Madison Gateway LLC to be the lessee and developer of the remainder of Parcel 10, commonly known as 2083-2089 Washington Street and being Lots 1 and 2 on the Subdivision Plan (“**Lot B**”). The party finally designated as developer of Lot B, whether Madison Gateway LLC or another party, and who enters into a ground lease for Lot B (“**Lot B Lease**”), as evidenced by a notice of lease recorded in the Registry, shall hereinafter be referred to as the “**Lot B Lessee**”.
- G The Participating Parties, BRA and MassDOT wish to set forth understandings for the construction of operation of parking and related facilities for the shared use of Lot A and 2101 Washington, and, if the option stated herein is exercised, for Lot B.

AGREEMENT

In consideration of these presents, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows.

1 COMMON AREA PLAN AND EASEMENTS

- 1.1 **Common Area Plan.** Portions of Lot A, Lot B and 2101 Washington shall be improved and operated by the Participating Parties as a shared access and parking facility substantially shown on the plan entitled “Common Parking Area & Option Area”, dated December 23, 2103, by Allen & Major Associates, Inc. (“**Common Area Plan**”) to be record with the Registry, which facilities shall be constructed and operated as set forth in this Agreement.
- 1.2 **Access and Parking Easements.** The Lot A Lessee, 2101 Owner, BRA and MassDOT each grants to the Lot A Lessee and 2101 Owner the right and easement to construct and maintain facilities (the “**Common Access and Parking Improvements**”) on, over and under that portion of its respective property situated within the area labeled “Common Parking Area” on the Common Area Plan, together with an easement over the Common Parking Area to pass and repass in vehicles and on foot, for the parking, loading and unloading of vehicles, and for such other events and activities for which parking lots in are commonly used in commercial districts, subject to the terms and conditions of this Agreement (“**Access and Parking Easements**”). The easements granted by the BRA and MassDOT shall run with the land for the benefit of Lot A and 2101 Washington Street.
- 1.3 **Term.** The Access and Parking Easements shall terminate upon the termination of the Lot A

Lease, as the same made be renewed, extended or replaced from time to time; provided that if the option for Lot B Lessee to join this Agreement as set forth in Section 1.4 is exercised, the Access and Parking Easements shall terminate on the later to occur of (1) termination of the Lot A Lease, as the same may be renewed, extended or replaced from time to time and (2) termination of the Lot B Lease, as the same may be renewed, extended or replaced from time to time.

- 1.4 **Permanent Easements.** The BRA grants to the 2101 Owner an easement on and over the portion of its respective property included within the area labeled “Lot B Access Easement”, all as more particularly described below and as shown on the plan entitled “Parking & Access Easement”, dated December 23, 2103, by Allen and Major Associates, Inc. (“**Permanent Easement Plan**”) to be recorded with the Registry, a perpetual, non-exclusive easement to pass and repass by vehicle and foot, subject to the terms and conditions of this Agreement. The BRA Grants to the 2101 Owner a perpetual non-exclusive easement on and over the portion of its property included within the area labeled “Lot B Parking Easement” on the Permanent Easement Plan, to pass and repass in vehicles and on foot, and also a perpetual easement for parking , loading and unloading of vehicles thereon (“**Permanent Access and Parking Easements**”). 2101 Owner grants to the BRA an access easement over the area described as “Access Easement Area” on the Permanent Easement Plan to pass and repass in vehicle and on foot, but not for the parking or loading of vehicles thereon (“**Permanent Access Easement**”)
- 1.5 **Drainage Easement.** BRA and MassDOT grant to the Participating Parties, and the Participating Parties grant to each other, the right and perpetual easement to construct, maintain, replace and use conduits and drainage facilities within the Common Parking Area on the Common Area Plan, and on the Option Area if the Lot B Lessee or another party exercises its right to the Option Area Easement, for the purpose of draining stormwater from and across their respective premises (“**Drainage Easement**”).
- 1.6 **Option for Lot B Lessee to Join in Agreement.** In the event the BRA and MassDOT sell Lot B or enter into a Lot B Lease, the Lot B Lessee (which term shall include a grantee of the fee in the entire Lot B) shall have the option to join in this Agreement and have the benefit of the Access and Parking Easements and Drainage Easements (“**Lot B Option**”), provided that the Lot B Lessee:
- (a) Executes, delivers and records an amendment to this Agreement, whereby the Lot B Lessee grants to the Lot A Lessee and 2101 Owner an easement to maintain and use that portion of Lot B included within the area labeled “Option Area” on the Common Area Plan (“**Lot B Option Area**”), an easement to pass and repass by vehicle and on foot and for the parking, loading and unloading of vehicles and for such other events and activities for which parking lots in are commonly used in commercial districts, subject to the terms and conditions of this Agreement, and;
 - (b) Paves and installs curbs, sidewalks and other facilities, at its sole cost and expense to integrate the Option Area into the parking and access layout of the Common Access and Parking Improvement area as set forth on the Common Area Plan including such modifications of curbs, driveways, drainage and other existing Common Access and Parking Improvements as may be necessary to integrate such improvements.

From and after the last to occur of the foregoing conditions (the “**Lot B Easement**”

Commencement Date”), (1) the Lot B Lessee shall be a Participating Party; (2) the improvements in the Lot B Option Area shall be part of the Common Access and Parking Improvements; and (3) the Access and Parking Easements shall include the Lot B Option Area.

If the Lot B Lease is terminated while the Lot A Lease, as the same may be extended, renewed or replaced, remains in force, the BRA and MassDOT may jointly elect to terminate the participation of Lot B in the Access and Parking Easements, provided that no Participating Party shall have any obligation to remove any improvements constructed on Lot B pursuant to this Agreement. Upon such termination, (1) the Lot B Lessee, the BRA and MassDOT shall not be Participating Parties; (2) any improvements in the Lot B Option Area shall not be part of the Common Access and Parking Improvements; and (3) the Access and Parking Easements shall not include the Lot B Option Area. The BRA and MassDOT shall execute, deliver and record a notice of termination in form and substance reasonably satisfactory to the Participating parties, which notice, when recorded, shall be an amendment to this Agreement.

If the Lot A Lease is terminated while the Lot B Lease, as the same may be extended, renewed or replaced, remains in force, the BRA and MassDOT may jointly elect to modify the Common Access and Parking Improvements situated on Lot A provided that no such modification adversely impacts (1) any existing drainage structures or facilities within the Common Access Area, or (2) the 2101 Spaces (as hereinafter defined).

1.7 **Option for Lot A Lessee to Add Additional Parking Facilities to Agreement.** In the event the Lot A Lessee exercises its option under the Lot A Lease to lease a portion of Lot B (“**Additional Parking Area**”) for additional parking, which option shall be exercised in the manner and subject to the terms and conditions of the Lot A Lease and as set forth above for the exercise of the Lot B Option, the Lot A Lessee shall add the Additional Parking Area to the operation of this Agreement. From and after date on which the Lot A Lessee exercises its option for the Additional Parking Area (the “**Additional Parking Commencement Date**”), (1) the improvements in the Additional Parking Area shall be part of the Common Access and Parking Improvements; (2) the Access and Parking Easements shall include the Additional Parking Area; (3) the share of Common Area Costs for Common Area Management allocated to Lot A will be increased in proportion to the net number of new parking spaces added to Common Access and Parking Improvements; and (4) the Lot A Lessee shall have the option to reserve the twelve (12) additional parking spaces added thereby solely for its exclusive use

1.8 **BRA and MassDOT Not Participating Parties.** BRA and MassDOT shall not have any rights or obligations of Participating Parties in the Agreement. Every other provision of this Agreement notwithstanding, except as expressly set forth with respect to the BRA or MassDOT, BRA and MassDOT shall not be obligated into pay for the construction, maintenance or operation of the Common Access and Parking Improvements and shall not be entitled to rights under the Access and Parking Easements or Drainage Easement, unless they exercise, for their own account, the option set forth in Section 1.6. The Participating Parties shall jointly and severally indemnify and hold the BRA and MassDOT from all loss, costs, damage and damages, including reasonable attorneys fees, arising from the construction and operation of the Access and Parking Easement and the Drainage Easement. The 2101 Washington Owner shall indemnify and hold the BRA harmless all loss, costs, damage and damages, including reasonable attorneys fees, arising from the construction and operation of the Permanent Access and Parking Easements.

2 CONSTRUCTION OF COMMON AREA IMPROVEMENTS

- 2.1 **Construction of Common Infrastructure Improvements.** The Participating Parties shall enter into one or more joint contracts for the initial development of Common Access and Parking Improvements, including environmental remediation, if required. The cost of initial construction of the Common Access and Parking Improvements shall be borne by the Participating Parties as provided in separate agreements.
- 2.2 **Parking and Access during Construction.** Construction of Common Access and Parking Improvements shall be staged in accordance with a staging plan approved by the Participating Parties, which plan shall take into account the necessity of maintaining access and 56 parking spaces for the supermarket now in operation at 2101 Washington, and the simultaneous construction work on Lot A, Lot B and 2101 Washington.

3 MAINTENANCE AND OPERATION

- 3.1 **Manager.** There shall be a manager ("**Manager**") appointed to operate and maintain the Common Access and Parking Improvements for the benefit of the Participating Parties. The initial Manager is Tropical Foods International, Inc. The Participating Parties may remove a Manager and appoint a new Manager at any time by unanimous consent if there are two Participating Parties and by consent of Participating Parties whose voting shares as set forth in Section 3.3 are at least 66%. The Participating Parties may, but shall not be obligated to, enter into a written contract with the Manager with respect to the Manager's services hereunder. The Manager shall be entitled to commercially reasonable compensation for its services in the amount specified from time to time in the Common Area Budget, defined below.

In the event of a failure of the Manager to perform its duties as Manager, then if the Manager is a Participating Party, the non-Manager Participating Parties may give notice setting forth with particularity the deficiencies in performance. If such deficiencies are not corrected to the reasonable satisfaction of the non-Manager Parties within 30 days of notice, the non-Manager Participating Parties may remove the Manager and appoint a new Manager.

- 3.2 **Common Area Management.** Upon the completion of the Common Access and Parking Improvements, or any functional portion thereof that is placed into active use, the Manager shall be responsible for managing the areas on the Common Access and Facilities (the "**Common Area**"). Management shall include, but are not limited to cleaning, snow removal, vehicle towing, maintenance, repair and replacement of parking and pedestrian areas, payment of utility charges, landscaping, trash removal, maintenance of storm water systems and oversight of any security personnel and camera systems ("**Common Area Management**").
- 3.3 **Common Area Costs.** All commercially reasonable costs incurred by the Manager for Common Area Management shall be paid by the Participating Parties in accordance with their specified shares. Prior to the Lot B Easement Commencement Date, the share allocated to Lot A is 67.5% and the share allocated to 2101 Washington is 32.5%. From and after the Lot B Easement Commencement Date, the share allocated to Lot A is 55%, the share allocated to Lot B is 25%

and the share allocated to 2101 Washington is 20%. Common Area Management costs shall include, without limitation, the commercially reasonable costs of cleaning and snow removal, repairs, replacements, lighting and utilities, landscaping, insurance, license fees, wages and benefits of personnel dedicated to Common Access and Parking Improvements operation, security services, and any approved fee to the Manager for its services pursuant to this Agreement.

The Manager shall propose an annual budget for the costs of Common Area Management for each year ("**Common Area Budget**"), such Common Area Budget to be provided to each of the Participating Parties not later than ninety (90) days prior to the end of each calendar year. If there are two Participating Parties, approval of the Common Area Budget by the Participating Parties must be unanimous. If there are more than two Participating Parties, the Common Area Budget must be approved by 66% of the total voting share of the Participating Parties. The Lot A Lessee will receive 55% of the voting share, the Lot B Lessee will receive 25% of the voting share, and the 2101 Owner will receive 20% of the voting share. The Common Area Budget shall include commercially reasonable reserves for future repairs and replacements. The Common Area Budget shall be subject to the consent of the Participating Parties as provided above, which consent shall not be unreasonably withheld, delayed or conditioned, and which consent shall be deemed given if written objection is not delivered to the Manager and the other Participating Parties within 60 days of receipt of the proposed Common Area Budget. Except in emergencies, the Manager may not incur costs in excess of amounts included in the Common Area Budget without the consent of the Participating Parties.

The Manager shall bill each Participating Party monthly for its estimated share of the Common Area Management costs as set forth in the Common Area Budget. Payment shall be due within 30 days after receipt. The Manager shall provide monthly statements of receipts, expenditures and account balances. Each Participating Party is entitled to examine and copy the books and records of the Manager pertaining to Common Area operation, on reasonable notice to the Manager. Reserve funds, if any, shall be deposited in a separate bank account captioned "Melnea Washington Common Area Account".

- 3.4 **Parking Management Plan.** With the unanimous approval of the Participating Parties, Manager shall adopt reasonable written rules and procedures for the management of common parking facilities within the Common Access and Parking Improvements ("**Parking Management Plan**"). The Parking Management Plan will specify, among other things, hours of operation, time limits, signage, limitations on employee parking, reservation of spaces, access controls, use of the parking area for events and other matters. Once approved by the Participating Parties, the Parking Management Plan may be amended only with the unanimous consent of the Participating Parties.

Eighteen (18) parking spaces reasonably proximate to the 2101 building shall be reserved for the exclusive use of tenants of the 2101 Owner (the "**2101 Spaces**"). The 2101 Owner will control the assignment of the 2101 Spaces. Once designated, the 2101 Spaces may not be changed without the advance written consent of the 2101 Owner.

Unless otherwise specified in the Parking Management Plan, the remaining parking spaces in the Common Access and Parking Improvements will be available to all visitors, employees and customers of the Participating Parties, with the expectation that ninety one (91) spaces will be

used by employees, customers and visitors to Lot A, not more than nine of which will be used by employees of the business on Lot A at any one time; seven (7) spaces will be used by customers and visitors to 2101 Washington not more than four of which will be used by employees of the businesses located on 2101 Washington.

From and after the Additional Parking Commencement Date, the number of parking spaces allocated to Lot A shall be increased by the net number of additional parking spaces resulting from the addition of the Additional Parking Area.

The Manager shall enforce parking restrictions. Any Participating Party may enforce parking restrictions included in the Parking Management Plan and shall have the right to tow vehicles that are in violation of the Parking Management Plan.

- 3.5 **Changes to Common Access and Parking Improvements.** The Manager may modify and reconfigure curbs, sidewalks, paved areas, striping, signage, drainage and other improvements to comprising the Common Access and Parking Improvements, provided that any material change to the Common Access and Parking Improvements shall be made only with the advance written consent of all Participating Parties, and any change that would materially diminish the convenience of a Participating Party or its tenants and customers shall be made only with the advance written consent of the affected Participating Party.
- 3.6 **Use of Common Area for Events.** Any temporary use of any portion of the Common Area for events or non-parking activities (e.g., farmer's markets, art shows, sidewalk sales, etc.) shall be in accordance with the Parking Management Plan.
- 3.7 **Signage.** The Participating Parties shall be permitted signage space at both the Melnea Cass Boulevard and Washington Street entrances. Size, style, and placement of such signage is subject to approval by the other Participating Parties, not to be unreasonably withheld, delayed or conditioned.
- 3.8 **Trash Removal.** Each Participating Party shall be responsible for trash removal associated with its buildings. Removal of trash from the Common Access and Parking Improvements Area shall be included in Common Area Maintenance.
- 3.9 **MassWorks Provision.** Commencing on the date that is three months after the opening of a supermarket on Lot A, fifteen (15) parking spaces shall be designated and identified by signage as public spaces available for use by the general public. Such signage shall be approved by the BRA prior to posting. On the date that construction commences on Lot B or 2101 Washington, the signage identifying the fifteen spaces open for use by the general public may be removed, and thereafter the Common Access and Parking Improvements may be restricted to use by the Participating Parties and their tenants and visitors to Lot A and 2101 Washington and, after the Lot B Option Commencement date, to Lot B. At all times, the retail and commercial parking spaces in the Common Access and Parking Improvements shall be restricted to short-term use, not to exceed two hours (or such lesser time period as the Participating Parties shall agree). If parking time limits are enforced through the use of meters, all money collected shall be provided to the BRA or its designee. The Manager shall manage the Common Access and Parking Improvements, including the enforcement of time restrictions, to ensure that all retail and commercial parking is short-term and that the supermarket, if any, on Lot A has sufficient

parking during peak hours.

4 TITLE, APPURTENANCE AND MORTGAGEE NOTICE

- 4.1 **Title.** This Agreement is subject to all instruments, easements, restrictions and reservations of record as of the date hereof, except to the extent the same may have been or may hereafter be subordinated to this Agreement.
- 4.2 **Appurtenance.** The benefits, burdens, rights, obligations, and restrictions created by this Agreement and the Easements shall be appurtenant to and run with Lot A, 2101 Washington and, from and after the Lot B Easement Commencement Date, Lot B, and shall inure to the benefit of and be binding upon the parties and those claiming by, through or under the Lot A Lessee, 2101 Owner and Lot B Lessee (from and after the Lot B Easement Commencement Date), respectively.
- 4.3 **Mortgagee Notice.** Any holder of a mortgage on Lot A, Lot B or 2101 Washington shall be entitled to receive copies of any written notice alleging default under this agreement, provided that such mortgagee has delivered written notice to the Lot A Lessee, Lot B Lessee, 2101 Owner, the BRA and MassDOT of it name and address. Notwithstanding anything else to the contrary in this Agreement, except in the event of an emergency no party shall seek any remedy for a default under this Agreement without giving any mortgagee of the defaulting party, who has provided written notice of its name and address, the same time period as provided to the defaulting party to cure the default, which cure period shall run concurrently with that of the defaulting party.

5 INSURANCE AND CASUALTY

- 5.1 **Liability Insurance.** Each Participating Party shall maintain commercial general liability insurance against claims for bodily injury or death and property damage occasioned by any negligent acts of such party and their servants, agents, employees, tenants, invitees and other users of the Common Area. Each policy shall have a combined single limit of not less than \$1,000,000 in respect of injury or death to one person or property damage, and \$2,000,000 for an "occurrence" as defined in such policy. In addition, each party shall maintain a so-called umbrella policy of liability insurance in an amount not less than \$5,000,000. The insurance required to be maintained under this Agreement shall be on an occurrence basis and shall be evidenced by standard policies obtained from companies licensed to do business in Massachusetts and carrying a rating of A-, VIII or higher, according to the standards set by A.M. Best Company. Each policy of commercial general/umbrella liability insurance required of each party shall name the other parties and their respective mortgagees as an "additional insured" and shall provide that thirty (30) days prior notice of cancellation or termination shall be sent to the other parties. All insurance carried under this Agreement shall include a clause or endorsement denying rights of subrogation to the insurer to the extent rights have been waived by the insured thereunder prior to occurrence of the injury or loss. Each such policy shall name the other Participating Parties and the BRA and MassDOT as named insureds, as their interests may appear.

- 5.2 **Casualty Insurance.** Each Participating Party shall maintain casualty insurance with respect to Common Access and Parking Improvements situated on its land and, prior to the Lot B Easement Commencement Date, on the Common Access and Parking Improvements located on Lot B. The Manager shall be named a loss payee, as its interests may appear.
- 5.3 **Common Insurance.** If approved in the Common Area Budget, the Manager may obtain one or more policies of liability or casualty insurance with respect to the Access and Parking Easements and the Common Access and Parking Improvements, which policies may be in addition to or in lieu of the insurance required in Section 5.1 and 5.2.
- 5.4 **Waiver of Subrogation.** Each party hereby waives any rights of recovery against the other for injury or loss due to hazards covered by insurance to the extent of the proceeds actually received under such insurance.
- 5.5 **Casualty.** In the event of damage to all or any portion of the Common Access and Parking Improvements, the Manager shall cause the Common Access and Parking Improvements to be repaired or rebuilt, with the cost to be borne by the Participating Parties in proportion to the amount of casualty on their respective land.

6 MISCELLANEOUS PROVISIONS

- 6.1 **No Waiver.** No waiver of any condition or agreement in this Agreement by either party will imply or constitute a further waiver by such party of the same or any other condition or agreement.
- 6.2 **No Obligations to Third Parties.** The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties to, any person or entity other than the parties to this Agreement, except for successors and assigns expressly authorized, and except for Mortgagees in accordance with Section 3.4.
- 6.3 **Cooperation and Reasonableness.** The parties agree that they will cooperate with one another in all respects in furtherance of this Agreement. Unless expressly stated to the contrary, any consent or approval required of any party pursuant to this Agreement shall not be unreasonably withheld, conditioned or delayed.
- 6.4 **Entire Agreement, Amendment.** This Agreement, including all attached exhibits, contains the entire agreement between the parties with respect to its subject matter, excepting such matters as are expressly set forth in certain license agreements expiring not later than November 13, 2015 by and among the parties hereto and their affiliates. This Agreement can be amended only by a written document agreed to and signed by each party, provided that such consent shall not be unreasonably withheld, conditioned or delayed.
- 6.5 **Captions, Gender, Etc.** The captions are inserted in this Agreement only for convenience of reference and do not define, limit, or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter pronouns include one another.
- 6.6 **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to

be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected and shall continue in full force and effect; and in lieu of each provision found to be illegal, invalid, or unenforceable, there will be added to this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible.

- 6.7 **Notices.** Any notice, request, demand, consent, approval, or other communication required or permitted under this Agreement shall be in writing and shall be deemed given (i) when received if delivered by hand, (ii) two business days after being sent by registered or certified mail, return receipt requested or (iii) one business day after being sent by recognized overnight delivery service such as Federal Express, addressed as first indicated above (or to such other address as a party may provide by written notice in accordance with the preceding requirements):
- 6.8 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- 6.9 **Counterparts.** This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

[Signatures appear on the following pages]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have signed, sealed and delivered this Agreement as of the date of the Agreement set forth above.

MADISON TROPICAL MARKET LLC

By: Madison Park Development Corporation
its sole member

By: 
Jeanne Pinado, Executive Director and CEO

MADISON WILLIAMS LLC

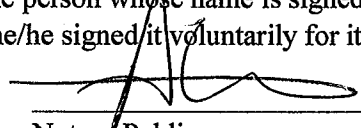
By: Madison Park Development Corporation
its sole member

By: 
Jeanne Pinado, Executive Director and CEO

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of December, 2013, before me, the undersigned notary public, personally appeared Jeanne Pinado, as Executive Director and CEO of Madison Park Development Corporation, sole member of Madison Tropical Market LLC, and proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

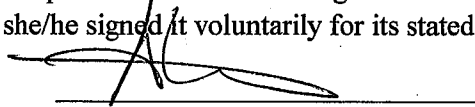

Notary Public

My commission expires: Sept 19, 2019

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of December, 2013, before me, the undersigned notary public, personally appeared Jeanne Pinado, as Executive Director and CEO of Madison Park Development Corporation, sole member of Madison Williams LLC, and proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.



Notary Public

My commission expires: *Sept 17, 2014*

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have signed, sealed and delivered this Agreement as of the date of the Agreement set forth above.

**MASSACHUSETTS DEPARTMENT OF
TRANSPORTATION**

By: _____
Richard A. Davey, Secretary

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of _____, 2013, before me, the undersigned notary public, personally appeared Richard A. Davey, as Secretary of the Massachusetts Department of Transportation and proved to me through satisfactory evidence of identification, which was _____, 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.

Notary Public

My commission expires:

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have signed, sealed and delivered this Agreement as of the date of the Agreement set forth above.

BOSTON REDEVELOPMENT AUTHORITY

Approved as to form:

By: _____
Peter Meade, Director

Associate General Counsel

COMMONWEALTH OF MASSACHUSETTS

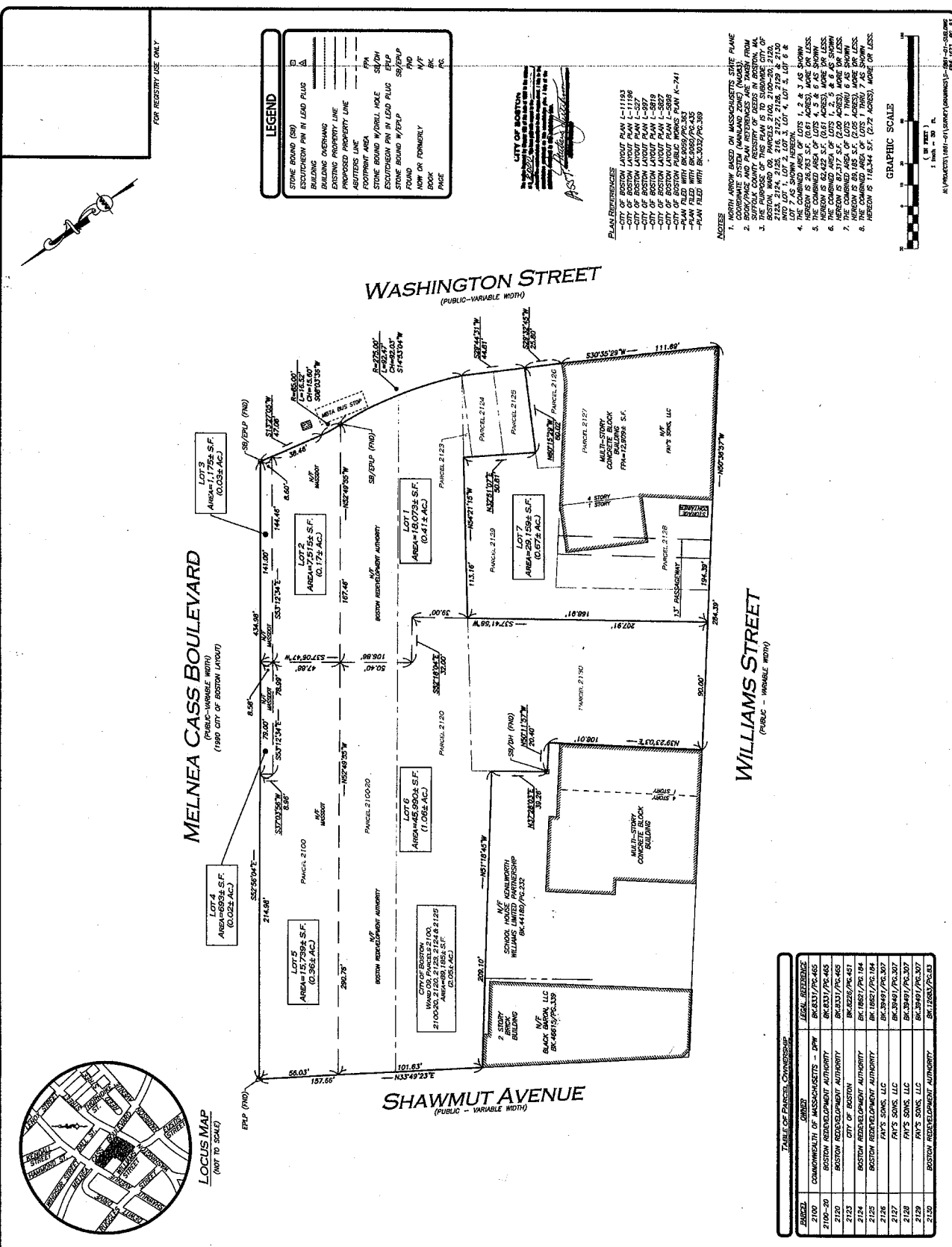
Suffolk, ss.

On this ____ day of _____, 2013, before me, the undersigned notary public, personally appeared Peter Meade, as Director of the Boston Redevelopment Authority, and proved to me through satisfactory evidence of identification, which was _____, 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.

Notary Public

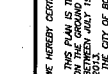
My commission expires:

Exhibit A

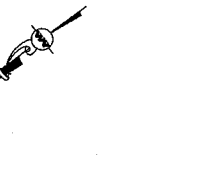


FOR REGISTRY USE ONLY

LEGEND	
STONE BOUND (SB)	ESTABLISHED PIN IN LEAD PLUG
BUILDING	EXISTING BUILDING
BUILDING OVERLAP	EXISTING ROBERT LINE
EXISTING ROBERT LINE	ADJUTERS LINE
FOOTPRINT AREA	FOOTPRINT AREA
STONE BOUND W/O DRILL HOLE	SB/DH
ESTABLISHED PIN IN LEAD PLUG	EPLP
STONE BOUND W/EPLP	SB/EPLP
FOUND	N/P
NEW OR FORMERLY	N/F
BOOK	BK
PAGE	PG



THE REGISTRY CERTIFY THAT THIS PLAN IS THE RESULT OF AN ACTUAL SURVEY MADE BETWEEN JULY 18, 2010 AND JANUARY 13, 2011. THE CITY OF BOSTON HAS NOT ADOPTED THIS PLAN AND ANY DEVIATION THEREFROM IN THE FIELD IS THE RESPONSIBILITY OF THE REGISTERED PROFESSIONAL ENGINEER. THE REGISTERED PROFESSIONAL ENGINEER HAS REVIEWED THIS PLAN AND REGULATIONS OF THE CITY OF BOSTON AND HAS DEEMED IT TO BE IN ACCORDANCE WITH THE CITY OF BOSTON'S REGULATIONS FOR THE RECORDING OF PLANS AND IS NOT PROVIDING ANY GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE REGISTERED PROFESSIONAL ENGINEER'S INFORMATION IS BASED ON THE BEST OF HIS PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF.



ALLEN & MAJOR ASSOCIATES, INC.

REGISTERED PROFESSIONAL ENGINEER
 ALLEN & MAJOR ASSOCIATES, INC.

PARCEL 10
MELNEA CASS BOULEVARD
ROXBURY (BOSTON), MA

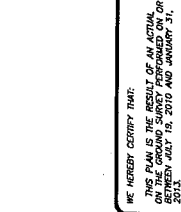
PROJECT:
 MADISON PARK DEVELOPMENT CORP.
 100 MADISON STREET, SUITE 102
 ROXBURY, MA 02119

REV.	DATE	DESCRIPTION
1.	04/27/19	19 PASSAGEWAY ADDED
2.	04/12/19	WESTERN NAME OF LOT 4 REVERSED

ADJUTANT GENERAL:

PROJECT NO.	DATE	DWG. NAME	DRAWN BY
18044	1-8-21	5193-01-SUB	0409/19

DRAFTED BY: COM
CHECKED BY: SE
REGISTERED BY:



ALLEN & MAJOR ASSOCIATES, INC.
 100 COMMERS STREET
 WOOD BURY, NJ 07095
 TEL: (973) 261-4849
 FAX: (973) 261-4849
 2000 WEST 30TH AVENUE, SUITE 200
 DENVER, CO 80202
 TEL: (303) 733-1100
 WWW.ALLEN-MAJOR.COM

NOTES:

1. NORTH ARROW BASED ON MASSACHUSETTS STATE PLANE
2. BOOK/PAGE AND PLAN REFERENCES ARE TAKEN FROM
3. SUFFOLK COUNTY REGISTRY OF DEEDS IN BOSTON, MA
4. BOSTON, MASS. PARCELS 2100, 2109-20, 2120, AND LOT 1, LOT 2, LOT 3, LOT 4, LOT 5, LOT 6, LOT 7 AS SHOWN HEREON.
5. HERSON IS 26,733 S.F. (0.61 ACRES) MARK FOR LESS.
6. THE COMBINED AREA OF LOTS 4, 5 & 6 AS SHOWN HEREON IS 87,317 S.F. (2.00 ACRES).
7. HERSON IS 67,317 S.F. (1.54 ACRES), MARK FOR LESS.
8. THE COMBINED AREA OF LOTS 1 THRU 7 AS SHOWN HEREON IS 178,044 S.F. (4.12 ACRES), MARK FOR LESS.

TABLE OF PARCEL COMMISSAR

PARCEL	DRAWN	LEGAL REFERENCES
2100	COMMONWEALTH OF MASSACHUSETTS - DPW	BK-8331/PG-465
2100-20	BOSTON REDEVELOPMENT AUTHORITY	BK-8331/PG-465
2120	BOSTON REDEVELOPMENT AUTHORITY	BK-8331/PG-465
2125	CITY OF BOSTON	BK-8331/PG-184
2125	BOSTON REDEVELOPMENT AUTHORITY	BK-8331/PG-184
2125	RAY'S BROS. LLC	BK-8349/PG-307
2125	RAY'S BROS. LLC	BK-8349/PG-307
2125	RAY'S BROS. LLC	BK-8349/PG-307
2125	BOSTON REDEVELOPMENT AUTHORITY	BK-8349/PG-307



LOCUS MAP
 (NOT TO SCALE)

CITY OF BOSTON, P.D.
 HILJAMA ROAD, BOSCH
 BK-4180/PG-232

SCHOOL HOUSE
 2100-20, 2120, 2125, 2124 & 2125
 AREA=13,865 S.F.
 (0.32± AC)

BLACK MARSH LLC
 BK-4615/PG-339

PLANNING REFERENCES:

- CITY OF BOSTON LAYOUT PLAN L-11159
- CITY OF BOSTON LAYOUT PLAN L-5277
- CITY OF BOSTON LAYOUT PLAN L-5819
- CITY OF BOSTON LAYOUT PLAN L-5857
- CITY OF BOSTON PUBLIC WORKS PLAN K-741
- PLAN FILED WITH BK-9059/PG-303
- PLAN FILED WITH BK-3032/PG-369

REGISTERED PROFESSIONAL ENGINEER:

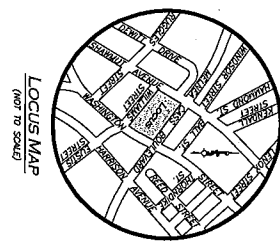
ALLEN & MAJOR ASSOCIATES, INC.

DRAWING TITLE:
 SUBDIVISION PLAN

1

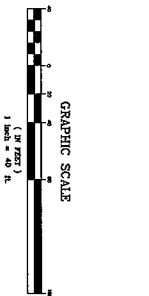
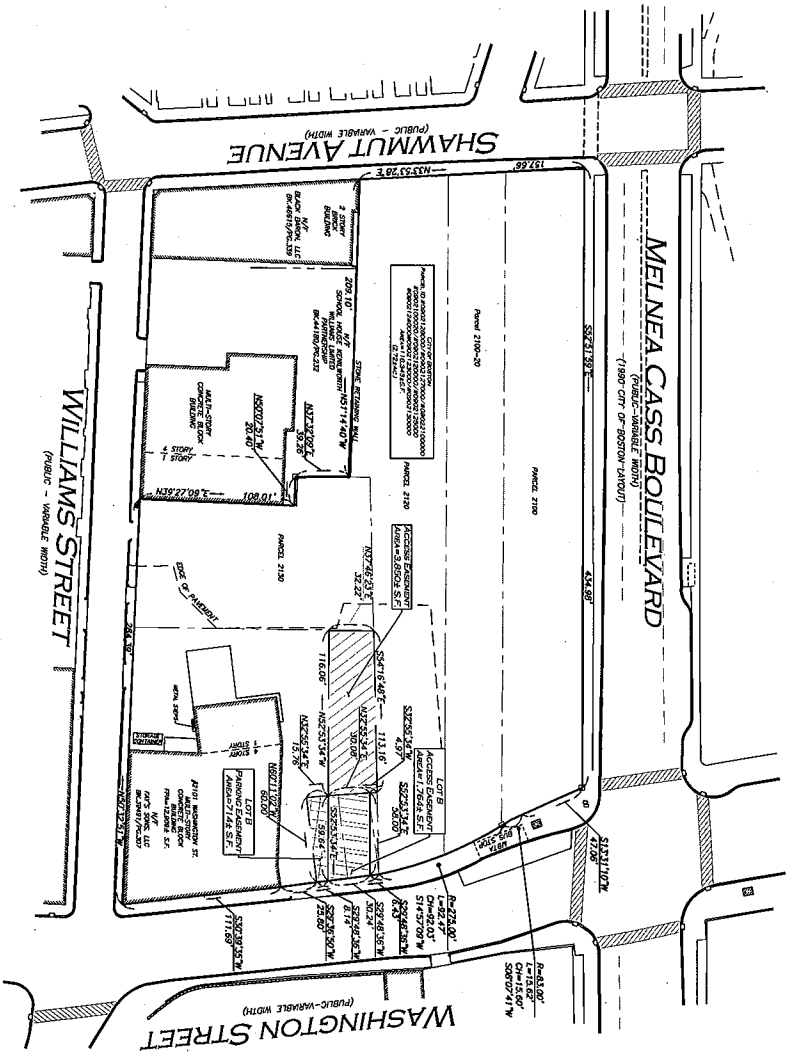
Exhibit B

Exhibit C



- NOTES**
1. NORTH ARROW TAKEN FROM LOT 10 PLAN L-11183
 2. SIGN/PAGE AND PLAN REFERENCES ARE TAKEN FROM THE APPROPRIATE PLAN.
 3. THE PURPOSE OF THIS PLAN IS TO CREATE THE THREE EASEMENTS SHOWN HEREON AS ACCESS EASEMENT, LOT B ACCESS EASEMENT AND LOT B PARKING EASEMENT.

- PLAN REFERENCES**
- CITY OF BOSTON LOT L-11183
 - CITY OF BOSTON LOT L-11186
 - CITY OF BOSTON LOT L-287
 - CITY OF BOSTON LOT 9919
 - STATE HIGHWAY LOT 9988
 - SIGN/PAGE WORKS PLAN K741
 - BK-3000 FC.435



LEGEND	
[Symbol: Small circle]	STAIR HOLE (SH)
[Symbol: Square]	STONE BOUND (SB)
[Symbol: Circle]	FROM PROP. (FP)
[Symbol: Triangle]	HANDICAP RAISE
[Symbol: Dashed line]	ACCESS EASEMENT
[Symbol: Solid line]	LOT B ACCESS EASEMENT
[Symbol: Dotted line]	LOT B PARKING EASEMENT
[Symbol: Stippled pattern]	BUILDING OVERLAP
[Symbol: Horizontal dashed line]	PROPERTY LINE
[Symbol: Vertical dashed line]	ADJUTERS LINE
[Symbol: Long-dashed line]	CURB
[Symbol: Short-dashed line]	CHAIN LINK FENCE
[Symbol: Thick solid line]	GRAVITY
[Symbol: Thin solid line]	STONE BOUND W/ROUND HOLE
[Symbol: Dotted line]	CONC. BOUND W/ROUND HOLE
[Symbol: Stippled pattern]	STONE BOUND W/ROUND HOLE PLUS
[Symbol: Horizontal dashed line]	ROUND
[Symbol: Vertical dashed line]	ROUND
[Symbol: Horizontal dashed line]	ROUND ON FOREHEAT
[Symbol: Square]	PK.
[Symbol: Circle]	PK.
[Symbol: Triangle]	PK.
[Symbol: Diamond]	PK.

FOR REVISION USE ONLY

ISSUED FOR REVIEW
 REVIEWED BY: [Name]
 DATE: 6/6/2023

PROFESSIONAL LAND SURVEYOR FOR ALLEN & MAJOR ASSOCIATES, INC.

THIS IS TO CERTIFY THAT:
 THIS PLAN IS THE RESULT OF AN ACTUAL SURVEY OF THE PROPERTY DESCRIBED ON BOSTON MAPS 101, 18, 2010 AND JANUARY 10, 2011.
 ALL INFORMATION WAS RECORDED IN ACCORDANCE WITH THE RULES AND DEEDS RECORDS OF THE CITY OF BOSTON AS OF DATED JANUARY 11, 1976 AND RENEWED.
 THE CITY OF BOSTON HAS NOT ADOPTED THE SURVEY CONTROL LINE SHOWN ON THIS SHOWN ACCORDING TO CURRENT CITY OF BOSTON MAPS.
 THE ABOVE IS GIVEN TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, AND I AM NOT PROVIDING ANY WARRANTIES, EXPRESS OR IMPLIED, FOR THE ABOVE INFORMATION.
 ALLEN & MAJOR ASSOCIATES, INC.

PROJECT: PARCEL 10 & 2101 WASHINGTON STREET MELNEA CASS BOULEVARD ROXBURY (BOSTON), MA

ADJUTMENT: MADISON PARK DEVELOPMENT CORP., 184 DUDLEY STREET, SUITE 102, ROXBURY, MA 02119

PROJECT NO.: 188-541
DATE: 12/21/19

SCALE: 1" = 40' ENGINE: MARISSA CHAMBERLAIN
DRAWN BY: MADISON CHAMBERLAIN

ALLEN & MAJOR ASSOCIATES, INC.
 200 WASHINGTON STREET, FIFTH FLOOR
 BOSTON, MA 02108
 TEL: (617) 552-8888
 FAX: (617) 552-8889

THIS DRAWING HAS BEEN REVIEWED BY ALLICEN R. MAJOR, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF MASSACHUSETTS, AND SHE HAS HEREBY CERTIFIED THAT THE INFORMATION CONTAINED HEREIN WAS ACCURATELY OBTAINED FROM A REASONABLE AND CAREFUL SURVEY OF THE PROPERTY DESCRIBED ON BOSTON MAPS 101, 18, 2010 AND JANUARY 10, 2011.

DRAWING TITLE: PROPOSED PARKING & ACCESS EASEMENT

SHEET NO.: E-1

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS

Superior Court Department

Tropical Fay’s – II, LLC and]
Tropical – Melnea Holdings, LLC,]
Tropical Foods International, Inc.]
Plaintiffs,]
v.]
City of Boston Zoning Board of Appeals,]
Sherry Dong, Norm Stenbridge,]
Giovanny Valencia, Raheem Shepard,]
Hansy Better Barraza, Alan Langham,]
And Katie Whewell, as they are the Members of]
The City of Boston Zoning Board of Appeals, and]
Madison Trinity 2085 Development, LLC,]
Defendants.]

Exhibit D

Madison Tropical Parcel 10
Memorandum of Understanding
Amended and Restated

This Memorandum of Understanding (the "MOU") is intended to amend and restate the original Memorandum of Understanding dated July 21, 2011 between Fay's Sons, LLC and Tropical Foods International, Inc., (collectively "Tropical Foods") and Madison Park Development Corporation ("MPDC") concerning the potential development of publicly owned land known as Parcel 10 and the adjacent 2101 Washington Street property, to wit:

1. Tropical Foods and MPDC (collectively the "Joint Venture" or the "Joint Venture Parties") have successfully secured a preliminary designation to develop a publicly-owned parcel of land in Lower Roxbury, MA, known as Parcel 10 (Exhibit A), plus all other publicly owned land on the block bounded by Washington Street, Williams St., Shawmut Ave., and Melnea Cass Blvd, and identified on the attached Parcel 10 Plan.
2. The new development on the combined site (hereinafter called "the Combined Development") will consist of three parts or "projects": (a) New construction on Parcel 10 to create a new building for the Tropical Foods supermarket, of approximately 27,000 GSF ground floor and 17,000 GSF second floor area (the "New Supermarket"), (b) New construction on Parcel 10, located at the corner of Melnea Cass and Washington Street, consisting of approximately 59,000 GSF of various uses including ground floor retail of roughly 11,000 GSF and office uses on 3.5 floors above totaling about 48,000 GSF (the "Building B") - alternative plans for Building B include a mix of residential and office space on upper floors as well as solely a residential use on upper floors - and (c) Re-development of Tropical Food's current property located at 2101 Washington Street, into approximately 11,000 GSF of ground floor retail and community/management space, and approximately 30 apartment units on the upper floors (the "2101 Redevelopment"), together with appurtenant underground parking at Building B, circulation and landscape improvements. The Joint Venture Parties agree on the current configuration of the Project, including the New Supermarket configuration and location, the scale of Building B, residential unit count, phasing and site plan of the Combined Development. Substantial changes to the Project in design or allowed uses required by permitting authorities subsequent to this Agreement are subject to mutual agreement by the Joint Venture Parties. The current site plan and building footprints for the proposed property uses is shown in site plan prepared by DHK Architects dated July 11, 2013 and attached to this MOU as Exhibit "B".
3. MPDC and Tropical Foods jointly received tentative designation by Boston Redevelopment Authority (BRA) and MassDOT on May 15, 2012 for their Parcel

Madison Tropical MOU

Page 2.

10 proposal. Since receiving tentative designation, the Joint Venture Parties have advanced the design, permitting and financing of the Combined Development and its common site improvements. The Combined Development has obtained the following approvals to date:

- a. Article 80 approval by Boston Redevelopment Authority Board
- b. ENF approval by MEPA
- c. Zoning Approval by ZBA
- d. PNF Approval by MHC

The Joint Venture Parties have submitted applications for approval for the Combined Development that are currently pending and expect to be approved by August 2013:

- e. Approval of request for waiver to NEPA
- f. TAPA Approval

The Joint Venture Parties will soon submit applications for the Combined Development for the following approvals:

- g. Boston Water and Sewer
- h. Public Works Dept.

Funding applications have been submitted to MassWorks and MassDevelopment to pay for construction costs associated with common area site preparation and improvements. Commitment letters have been received by these agencies.

4. Both parties shall make good-faith efforts to support the Project described herein, through both public and private communication. In the context of generating political support for the project, this MOU or its subsequent successor agreement may be shared with appropriate public officials. Both parties will provide letters of support, and attend public hearings in support of the Joint Venture's acquisition of public parcels relating to the Combined Development and the individual projects.
5. MPDC shall be the Master Developer of the Combined Development, responsible for pre-construction planning, site assessment, design and engineering for the overall site plan and common improvements, development activities and entitlement approvals, securing construction financing for common site preparation and common site improvements, and arrangements for the cooperative use of portions of the site for the three parts identified above, and timely completion of the common site improvements. MPDC shall not be responsible for construction of the New Supermarket in any form, and shall fund soil remediation within the footprint of the New Supermarket in its capacity as the Master Developer as mutually agreed by both Joint Venture Parties. These

Madison Tropical MOU

Page 3.

activities and responsibilities are referred to as the "Master Development Work" (which is Schedule 1 of the Master Development Services Agreement).

The Joint Venture Parties agree on a) the overall site plan for the Combined Development as shown in Exhibit B, b) the general uses of each of the Projects identified above, c) the schedule as shown in Exhibit C, d) the budgets for Master Development Work as shown in Exhibit D, e) location, control and cost allocation for surface parking and, e) use restrictions. Any significant correspondence, communication or agreement with the City of Boston or the BRA concerning the Overall Development on behalf of the Joint Venture as well as any changes to the site plan as it may be revised and engineered over time, shall be mutually agreed upon by the Joint Venture Parties.

Tropical Foods shall have exclusive approval over a) the location, size and design of the New Supermarket, and b) the delivery and access arrangements for the New Supermarket. Tropical Foods and MPDC have established parking requirements for each of the Projects, as described in Section 11 of this agreement.

6. Except as otherwise specified in this or subsequent agreement of the Parties, the costs of the Master Development Work, prior to construction, shall be born by the Joint Venture Parties on the following basis: all third-party costs for planning, engineering, legal, permitting and design and financing fees and other charges attributable to the Master Development Work shall be paid sixty percent (60%) by MPDC and forty percent (40%) by Tropical Foods, except where specific costs are solely attributable to one specific building in which case it will be allocated to that party. The allocation of direct and indirect construction costs associated with the site preparation for the common areas and for the common improvements shall be paid forty-five percent (45%) by MPDC and fifty-five percent (55%) by Tropical Foods and it is anticipated that all common site construction costs will be paid or subsequently reimbursed by the Massworks Program. Site costs specific to one user (such as costs related to utilities serving a single user) shall be separately allocated to the specific party. See Section 14 on Cost Allocations. The individual parties will be responsible for architectural design and engineering of their specific project(s), as described below, through commencement of construction, and entirely responsible for the financing and construction and operations of their respective project(s) other than the cost of commonly shared improvements and operations.

MPDC shall receive a development fee from the Joint Venture for its work as Master Developer, such fee to be twelve percent (12%) of the total cost of the Master Development Work, (including construction of common site improvements and infrastructure).

Madison Tropical MOU

Page 4.

7. The Joint Venture Parties agree that 2101 Washington Street will be subject to a Purchase and Sale agreement between Faye Sons, LLC and MPDC (or its affiliate) executed simultaneously with this MOU.
8. MPDC as the Master Developer will be responsible for timely management of planning and engineering work and pursuit of necessary City approvals for the Combined Development in cooperation with Tropical Foods. MPDC will oversee the design, engineering and contracting of the common area improvements, including much or all of the parking areas to be completed in appropriate stages as reasonably approved by Tropical Foods and intended to support its operation at its current and future location. Subsequent new construction and renovation work on MPDCs buildings shall be managed so as to minimize the disruption to parking and access for Tropical Food operations.
9. MPDC will be responsible for the timely design, financing, construction and operation of the 2101 Redevelopment and the New Building B. MPDC or its affiliate will be the fee-simple Owner of the 2101 Redevelopment and the Ground Lessee of the New Building B site and improvements, and will enter into an agreement with the Joint Venture for use and payment of apportioned costs of construction and operation of the common improvements. Furthermore, MPDC will grant the necessary easements to the Joint Venture or other parties in order to facilitate the construction and operation of common improvements including the shared parking areas. In the event that MPDC has not yet entered into a ground lease for Building B with the BRA, then MPDC as Master Developer will endeavor to have the BRA provide the same easements and rights to Tropical and the Joint Venture as it would otherwise have provided as lessee.
10. Tropical will be responsible for the timely design, financing, construction and operation of the New Supermarket. Tropical or its affiliate will sublet the Site A Premises from MPDC or its affiliate, which will be the Ground Lessee of the New Supermarket site and improvements. TF or its affiliate will enter into an agreement with the Joint Venture for use and payment of apportioned costs of construction and operation of the common improvements. Furthermore, Tropical will grant the necessary easements to the Joint Venture or other parties in order to facilitate the construction and operation of common improvements including the shared parking areas pursuant to details in the attached Phasing Plan (Exhibit E).
11. Madison Park Development Corporation understands that Tropical Foods has entered into an agreement with Bank of America for New Markets Tax Credits for the New Supermarket. In connection with this transaction it is anticipated that the Mortgage Notes Receivable from Tropical Foods made from the proceeds of the equity funds provided under the new market structure will be assigned to MPDC (or its affiliates) at the end of the New Market Tax Credit compliance period. MPDC intends to enter into a sublease agreement with Tropical Foods (or its

Madison Tropical MOU

Page 5.

affiliate) related to the ground lease that MPDC (or its affiliate) shall enter into with the BRA and MassDOT, provided that the lease agreement is to MPDC's satisfaction. Payments to be made by Tropical Foods under the mortgage note payable to MPDC or its affiliates, will be used to pay for Tropical Foods lease obligation under the sublease agreement. In order to enter into this transaction, MPDC (or its affiliates) requires full indemnification for any financial, property liability or any tax consequences arising as a result of this anticipated transaction caused by either existing or future tax legislation.

12. **Parking:** The common surface parking facilities will be subject to a common use agreement between each of the Joint Venture Parties and/or their Project owners (affiliates of Tropical Foods and MPDC), which shall establish the right of access, passage and parking for tenant and customers, including the use by Tropical Foods of at least 91 parking spaces and use by other tenants of the remaining spaces. MPDC agrees to include in its design and construction of Building B underground parking spaces or other suitable arrangements for its upper-story users so as to not require use of surface parking by employees of the office space. The Joint Venture parties shall work together to minimize disruption to surface parking due to construction of Building B, but will otherwise cooperate with its construction. Parking demand associated with retail space at Building B and the 2101 Redevelopment shall be satisfied by at least 17 surface parking spaces or 1 space per thousand square feet of leasable space, whichever is less. Upper floor tenants of the 2101 Redevelopment shall also have exclusive access to at least 18 surface parking spaces located closest to 2101 Washington and reasonably contiguous. Tropical Foods will have the right to operate the common surface parking facilities in accordance with such use agreement, and to establish and enforce parking rules suitable to its and other uses in the Combined Development. Tropical Foods' rights to operate and control parking will not extend to underground parking.

- Surface spaces for the Master Site should equal a minimum of 126 spaces
- MPDC agrees to provide approximately one underground parking space per one thousand one hundred square feet of upper level office or residential space.
- MPDC agrees that no upper floor tenants or employees should be parking in the surface parking lot.
- Both parties agree that Tropical Foods (or its assignee) will manage the parking of all surface spaces. Parking rules shall be agreed upon by both parties. Only the 18 spaces for residential tenants of the 2101 Redevelopment shall be for exclusive use.
- MPDC shall make all reasonable efforts to minimize any disruption or interference to surface parking, vehicular circulation and access to the Parcel 10 site while any underground parking structures are under construction. MPDC shall take all efforts to ensure that at least 55 on-site,

Madison Tropical MOU

Page 6.

surface parking spaces shall be available at all times during the construction of the common site improvements and shall be available for customers of the Tropical Foods market located at 2101 Washington Street.

13. Phasing: Project phasing will occur in accordance with attached Phasing Plan (Exhibit E).
14. A Construction, Operation, and Reciprocal Easement Agreement (COREA) shall be entered into by BRA and Joint Venture Parties prior to construction loan closing of the New Supermarket to govern the shared parking, pedestrian and landscaped areas within the project site
15. Uses: The parties agree to both permanent and temporary use restrictions for Building B and Building C as listed in the COREA.

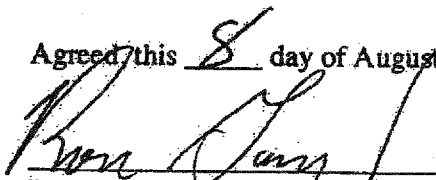
16. Cost Allocations

It is agreed that the common site development costs shall be split in the following manner and that the CAM charges shall be divided 45/55 (MPDC/TF) (assuming approximately the site plan attached as Exhibit A). Building B assumes its CAM obligations upon completion. Building C assumes its CAM obligations upon completion. Building B shall be responsible for 25% of total project CAM charges and Building C shall be responsible for 20% of total project CAM charges. During any periods where just one building is complete, it will pay all of the CAM costs associated with the common parking area. During any periods where two buildings are complete, the completed buildings will share 50/50 the CAM costs associated with the incomplete building.

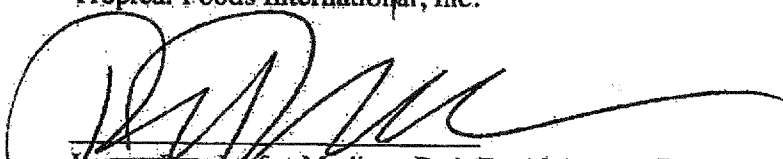
17. While this MOU remains in effect, neither party shall enter into any agreement that will jeopardize the terms set forth herein.
18. Any alteration of the Project or its business terms that will materially alter terms of this MOU must be agreed by both parties in writing. Such agreements will be appended to this MOU or incorporated in other appropriate legal documents (e.g. P&S agreement, Lease agreement, etc.).

Madison Tropical MOU
Page 7.

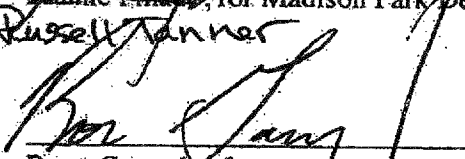
Agreed this 8 day of August 2013.



Ronn Garry Jr., for
Tropical Foods International, Inc.



~~James Tanner~~, for Madison Park Development Corp.
Russell Tanner



Ronn Garry Jr., for
Fay's Sons LLC

Madison Tropical MOU
Page 8.

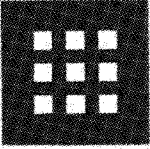

Exhibit A: Parcel 10 Plan of Land

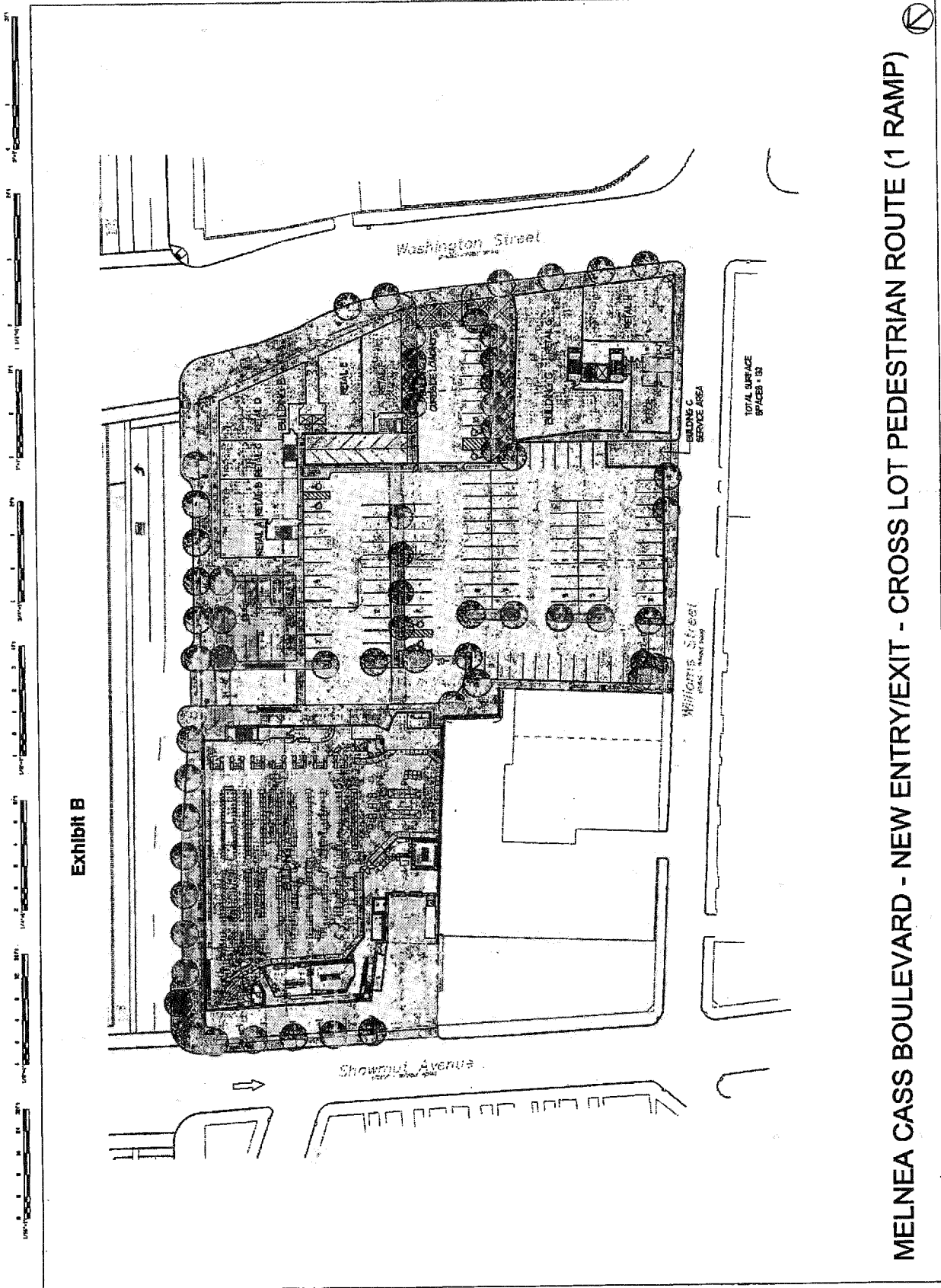
Exhibit B: Schematic Plans dates June 24, 2013

Exhibit C: Schedule

Exhibit D: Budget

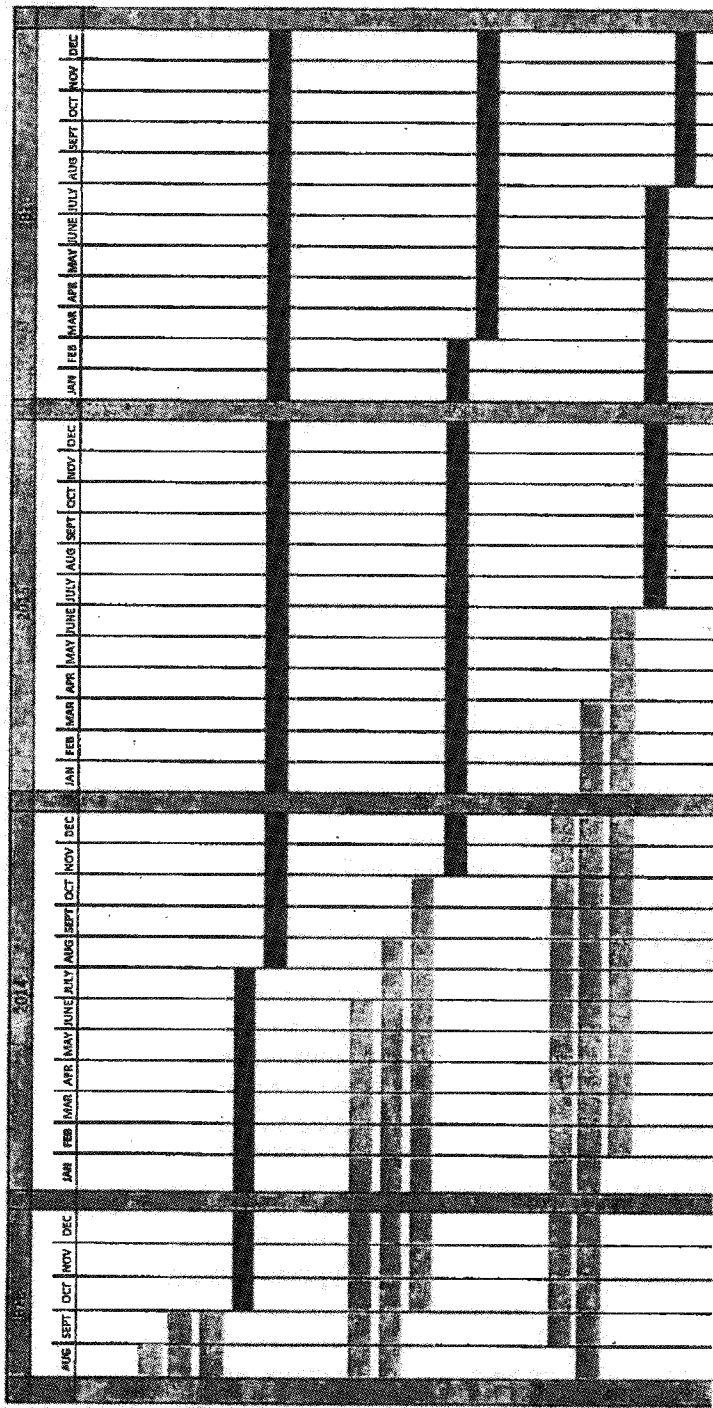
Exhibit E: Phasing Plan

 DHK ARCHITECTS	54 Canal Street 2nd Floor Boston, MA 02114 617-267-8408 Fax: 617-267-1890	Presented for: PARCEL 10 REDEVELOPMENT	SITE PLAN SCHEME 3A.3.9.4.5.5
		Project: PARCEL 10 REDEVELOPMENT	



MELNEA CASS BOULEVARD - NEW ENTRY/EXIT - CROSS LOT PEDESTRIAN ROUTE (1 RAMP)

Parcel 10 - Development Timeline
 8.9.13



Projected Development Timeline

Phase 1 - New Supermarket

- Design
- Permitting
- Financing
- Land Disposition
- Construction
- Occupancy

Phase 2 - Commercial Corner Building

- Design
- Permitting
- Financing
- Construction
- Occupancy

Phase 3 - Historic Rehab of 2101 Washington

- Design
- Permitting
- Financing
- Construction
- Occupancy

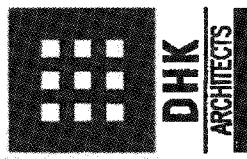
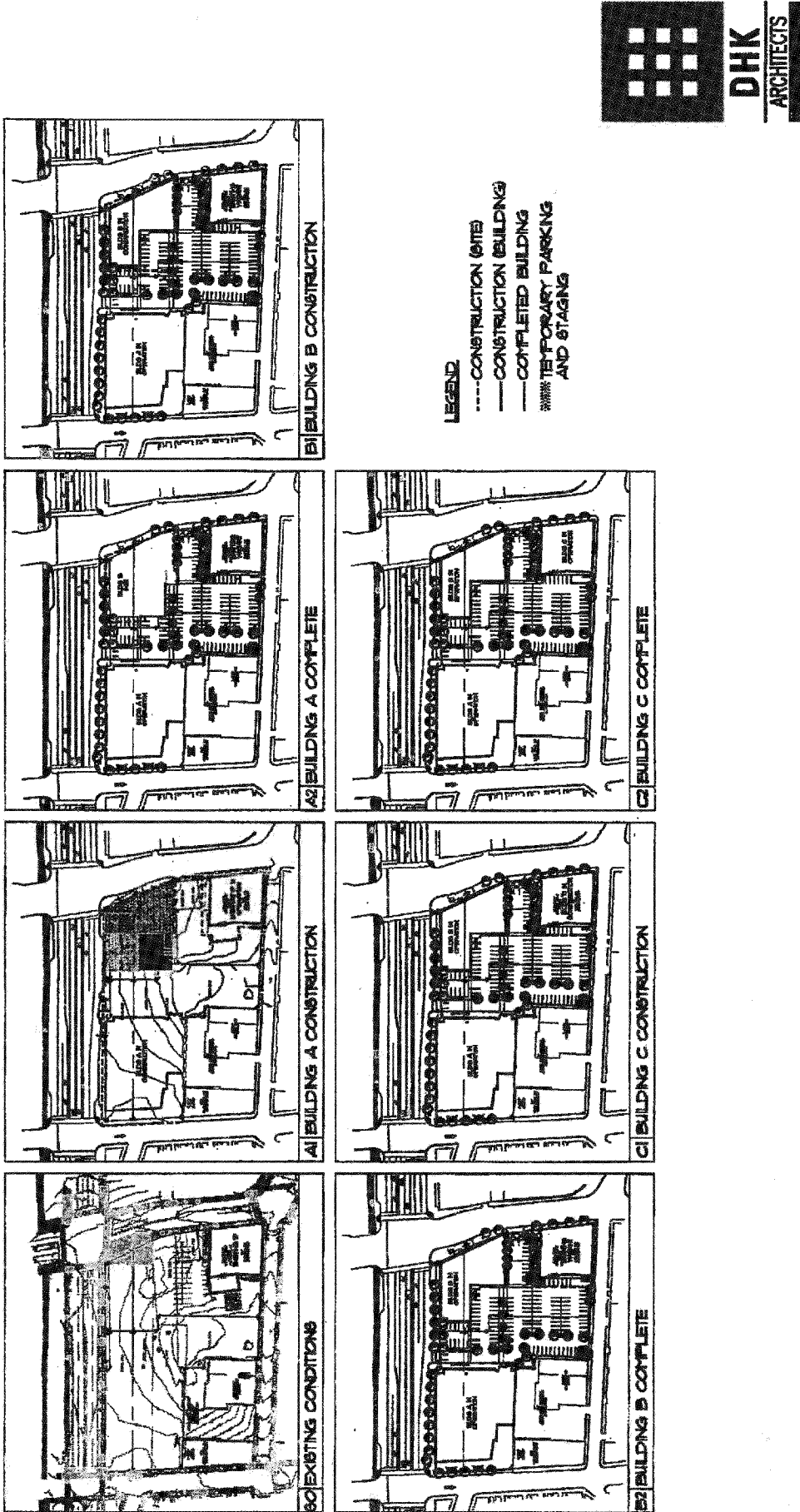
Exhibit D - Shared Costs Budget

Projected Masterplanning and Shared Construction Costs
 7.15.13 - REVISED BUDGET

			Proportionate Share of Budget			
	Rev. Budget	Prev. Budget	MPDC	%	TF	%
PreDevelopment Masterplanning Costs						
Survey (Allen and Major)	29,500	17,500	17,700	60%	11,800	40%
Permits and Fees	10,000	16,000	6,000	60%	4,000	40%
Geo-tech (Geo-technical Partners)	15,000	25,000	9,000	60%	6,000	40%
Environmental Investigation (GEC)	125,000	115,000	75,000	60%	50,000	40%
Traffic Engineering (HSH)	53,000	50,000	31,800	60%	21,200	40%
Architectural & Engineering			-	60%	-	40%
RFP Proposal				60%		40%
Architect (DHK and Terry Cracknell)	44,154		26,493	60%	17,662	40%
Masterplanning to Art 80 PNF Submission	148,846	180,000	89,308	60%	59,538	40%
Architect (DHK) + LA + MEP	133,846	173,000	80,308	60%	53,538	40%
Civil (STV)	-	7,000	-	60%	-	40%
Arch. services related to BCDC (DHK)	15,000		9,000	60%	6,000	40%
Site design, engineering, bidding and CA	145,000	144,800	87,000	60%	58,000	40%
Architect (DHK)	-	25,000	-	60%	-	40%
Civil (STV) + LA + MEP	130,000	107,800	78,000	60%	52,000	40%
Reimbursables	15,000	12,000	9,000	60%	6,000	40%
OCS grant consultant fees	20,000		-	0%	20,000	100%
Printing fees	7,600	7,000	4,560	60%	3,040	40%
BRA RFP and designation fees	77,000	52,000	46,200	60%	30,800	40%
Legal (KH)	135,000	80,000	81,000	60%	54,000	40%
MPDC fee 12%	348,156	297,768	208,893	60%	139,262	40%
Consulting fees related to RFP response	6,100	6,100	3,660	60%	2,440	40%
Article 80 consulting (Epsilon + MacRostie)	50,000	50,000	30,000	60%	20,000	40%
Contingency	50,000	55,000	30,000	60%	20,000	40%
Subtotal	1,264,356	1,096,168	746,614	59%	517,742	41%
Construction Period Shared Costs						
			MPDC	%	TF	%
Site Env. remediation	375,000	375,000	168,750	45%	206,250	55%
Pavement and Sidewalks	562,245	350,000	253,010	45%	309,235	55%
Lighting	107,975	100,000	48,589	45%	59,386	55%
Oversight, Inspections and Testing	60,000	35,000	27,000	45%	33,000	55%
Drainage	121,150	400,000	54,518	45%	66,633	55%
Excavation and Site Preparation	266,700	200,000	120,015	45%	146,685	55%
Landscaping/Hardscaping	70,000	70,000	31,500	45%	38,500	55%
Permits, Connection Fees and Municipal Details	30,000	-	13,500	45%	16,500	55%
Signage, Striping, Electric Vehicle Charging Station	17,928		8,067	45%	9,860	55%
Construction Contingency (not on env or oversight) 20%	235,200	153,000	105,840	45%	129,360	55%
Subtotal	1,846,197	1,683,000	830,789	45%	1,015,408	55%
TOTAL SHARED COSTS	3,110,553	2,779,168	1,577,402	51%	1,533,151	49%
Sources of Funding						
	Rev. Budget	Prev. Budget	MPDC	%	TF	%
MPDC	671,614	604,341	671,614	100%		0%
Tropical	467,742	524,827		0%	467,742	100%
MassWorks Grant	1,471,197	1,160,000	662,039	45%	809,158	55%
MassDevelopment Brownfields Grant	500,000	490,000	243,750	49%	256,250	51%
Total	3,110,553	2,779,168	1,577,402		1,533,151	

This budget assumes the use of MassWorks Grant funds for the site improvement costs.
 This budget assumes the use of MassDevelopment Grant funds for the environmental remediation costs.

Exhibit E - Phasing Plan



PHASING PLANS
SCALE: 1:200



COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS

Superior Court Department

Tropical Fay’s – II, LLC and]
Tropical – Melnea Holdings, LLC,]
Tropical Foods International, Inc.]
Plaintiffs,]
v.]
City of Boston Zoning Board of Appeals,]
Sherry Dong, Norm Stenbridge,]
Giovanny Valencia, Raheem Shepard,]
Hansy Better Barraza, Alan Langham,]
And Katie Whewell, as they are the Members of]
The City of Boston Zoning Board of Appeals, and]
Madison Trinity 2085 Development, LLC,]
Defendants.]

Exhibit E

**AGREEMENT
REGARDING CONTINUING USE AND DEVELOPMENT
OF PARCEL 10 AND 2101 WASHINGTON STREET**

This Agreement ("Agreement") is made as of December 30, 2013 by and among Madison Park Development Corporation ("MPDC"), Tropical Foods International, Inc. ("Tropical"), Madison Tropical LLC ("Madison Tropical"), Madison Tropical Market LLC ("MTM"), Madison Williams LLC ("Madison Williams"), Madison Gateway LLC ("Madison Gateway") and Tropical-Fay's II, LLC ("Fay's").

Background

- A Madison and Tropical formed Madison Tropical to undertake the redevelopment of land near Dudley Square, Roxbury, Massachusetts, ("Project") in three phases:
- (1) Phase 1, consisting of the leasing of land commonly known as 450 Melnea Cass Boulevard from the Boston Redevelopment Authority ("BRA") and construction of a new supermarket for Tropical ("Phase 1");
 - (2) Phase 2, consisting of the leasing of land commonly known as 2083-2089 Washington Street, from the BRA and construction of a mixed use building ("Phase 2");
 - (3) Phase 3, consisting of the acquisition by Madison Williams from an affiliate of Tropical of the land and building at 2101 Washington Street, and the redevelopment of the building for mixed retail and residential uses ("Phase 3").
- The Project included the joint development and operating of access, parking and related facilities for all three phases. MTM and Madison Williams have entered into a Constriction Operation and Reciprocal Parking Agreement dated December 30, 2013 ("COREA") with respect to such access, parking and related facilities.
- B The BRA accepted the proposal of Madison Tropical for the Project and tentatively designated Madison Tropical as developer.
- C Madison Tropical obtained permits and approvals for the Project, including approval under Article 80 of the Boston Zoning Code and Zoning Relief to permit a shared parking facility for all three phases.
- D At the request of Madison Tropical, the BRA gave final designation of MTM as developer of Phase 1. The BRA and MTM have entered into a lease dated as of December 30, 2013, for the Phase 1 land.
- E The parties intend that Madison Gateway be the developer of Phase 2. The BRA has not given final designation of Madison Gateway as developer of Phase 2 and has not entered into a lease for the Phase 2 land. The BRA has extended the designation of Madison Tropical as developer of Phase 2 for the period ending November 2015.
- F The parties desire to confirm their intention to develop the entire Project and to continue to propose Madison Gateway as developer of Phase 2.

- G The parties desire to set forth their written agreement with respect to continuation of development of the entire Project as planned and with respect certain matters relating to the Project applicable prior to the designation of Madison gateway as developer of Phase 2.

Agreement

Now, therefore, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

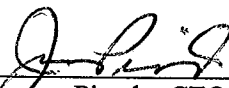
- 1 **Madison Gateway to Join COREA.** In the event that Madison Park Development Corporation, Madison Gateway LLC or an affiliate of Madison Park Development Corporation (“Madison Lot B Developer”) executes a ground lease with the BRA for development and use of Lot B, then the Madison Lot B Developer shall exercise the option to join the COREA as a Participating Party and shall become a party to this Agreement, including, without limitation, the restrictions set forth in Sections 2 and 3.
- 2 **Restrictions Applicable to Tropical Foods Parcel and 2101 Washington; Maintaining a Diverse Retail Mix.** So long as a supermarket is operated on Lot A, and provided the COREA remains in effect, then neither the Madison Lot B Developer nor the 2101 Owner shall use or permit the use is their respective premises for any of the following:
 - (a) Supermarket or grocery store
 - (b) Restaurant/café/coffee shop, provided that one or more restaurants/cafes/coffee shops having in total 65 or fewer seats for patrons and an aggregate floor area of less than 7,500 square feet is permitted. From and after the Lot B Easement Commencement Date, except by written agreement of the Madison Lot B Developer and the 2101 Washington Owner, up to 30 seats and 3,500 square feet of floor area shall be allocated to Lot B and the remainder to 2101 Washington.
 - (c) Sales within a pharmacy or convenience store of milk, dairy products, fresh produce, ethnic grocery items, paper towels, napkins, toilet paper, or Goya products if shelf space for such products exceeds 20 linear feet.
 - (d) Florist, provided that this restriction shall not apply if a florist shop is not opened at 450 Melnea Cass Boulevard within twelve months of the opening of a supermarket thereon, or if a at any time the 450 Melnea Cass Boulevard ceases to have a florist shop within the supermarket.
 - (e) Bakery, provided that this restriction shall not apply if a full-service bakery is not opened at 450 Melnea Cass Boulevard within twelve months of the opening of a supermarket thereon, or if a at any time the 450 Melnea Cass Boulevard ceases to have a full-service bakery within the supermarket.
 - (f) Package store for alcoholic beverages
 - (g) Dollar store, defined as a retail establishment where the average product sales price is less than \$1.50
 - (h) Full service gym in excess of 2,000 square feet

- (i) Auto repair
 - (j) Check cashing, except as incidental to payment for goods or service.
- 3 **Minimum Lot B Parking.** From and after the Lot B Easement Commencement Date, Lot B shall provide a sufficient number of parking spaces on Lot B to accommodate all required parking within Lot B, whether surface or below ground parking, and in any event not less than one parking space per 1,100 gross square footage of building. Parking for retail uses shall be provided by on-site surface parking, not less than one space per 1,100 square foot of net retail space. Parking for office uses shall be provided below grade.
- 4 **Transfer of Extended Tentative Designation.** Tropical Foods International agrees to cooperate in the transfer at a later date of the current tentative designation of Madison Tropical LLC to Madison Park Development Corporation or its affiliate. Prior to that Transfer, Tropical will not object or prevent actions by Madison Tropical pertaining to Lot B provided such actions are consistent with this Agreement.
- 5 **Continuing Support for Lot B.** Tropical Foods agrees that it shall not take any action or make any agreement that would interfere with, obstruct or otherwise deter the continued designation of Lot B to Madison Park Development Corp or an entity affiliated with it, or the execution of a ground lease with the BRA for Lot B.
- 6 **Modification of Use at Lot B.** Should Madison determine it necessary to do so, Tropical Foods agrees not to object or otherwise interfere with a request by Madison to the BRA and other permitting venues at a later date to modify the uses of Lot B to include residential uses, provided such change in use is consistent with the Use Restrictions in this Agreement;
7. **Exercise of Lot A Option for additional parking:** In the event that Tropical is entitled to exercise the option in Section 2.3 of its lease with the BRA, and does not intend to exercise the option, Tropical will immediately notify Madison. Tropical will then, if Madison so requests, exercise the option and sublease the additional parking spaces to Madison provided that all construction costs and additional ground lease payments associated with the exercise of the option will be paid by Madison.

[signatures on following page]

In witness whereof, the parties have executed this instrument under seal as of the day and year first above written.

MADISON PARK DEVELOPMENT CORPORATION

By: 
Jeanne Pinado, CEO

TROPICAL FOODS INTERNATIONAL, INC.


By: _____
Ronald L. Garry, Jr., President

TROPICAL-FAY'S II, LLC

By: _____
Ronald L. Garry, Jr., manager

MADISON WILLIAMS LLC

By: Madison Park Development Corporation,
Its Sole Member

By: 
Jeanne Pinado, CEO

MADISON GATEWAY LLC

By: Madison Park Development Corporation,
Its Sole Member

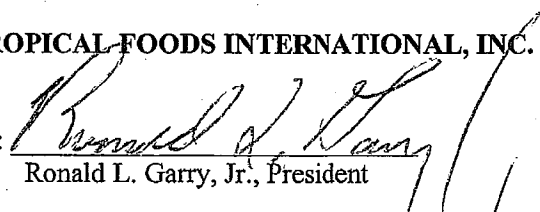
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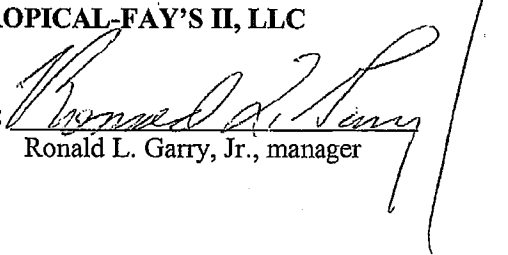
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Ronald L. Garry, Jr., President

TROPICAL-FAY'S II, LLC

By: 
Ronald L. Garry, Jr., manager

MADISON WILLIAMS LLC

By: Madison Park Development Corporation,
Its Sole Member

By: _____
Jeanne Pinado, CEO

MADISON GATEWAY LLC

By: Madison Park Development Corporation,
Its Sole Member

By: _____
Jeanne Pinado, CEO