

**CONTRACT BETWEEN AP ONE CHANNEL CENTER OWNER LP AND THE  
CITY OF BOSTON PURSUANT TO GENERAL LAWS,  
CHAPTER 121A, SECTION 6A**

This contract (this "6A Contract") is made as of this 27<sup>th</sup> day of August, 2012 under Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of The Commonwealth of Massachusetts, by and between AP ONE CHANNEL CENTER OWNER LP, a Delaware limited partnership (the "Applicant") and the CITY OF BOSTON, a municipal corporation of The Commonwealth of Massachusetts (the "City").

**WITNESSETH:**

WHEREAS, the Applicant has filed with the Boston Redevelopment Authority (the "Authority"), an application dated July 2, 2012 (as supplemented on July 5, 11 and 12, 2012) the "Application") for Authorization and Approval by the Authority of a Project Under Chapter 121A of the General Laws of the Commonwealth of Massachusetts and Chapter 652 of the Acts of 1960, each as amended, with respect to the development of certain land in the Fort Point Channel neighborhood of South Boston shown on the plan attached hereto as Exhibit A (the "Project Area") for the development of an approximately 525,000 square foot, eleven-story building to contain office uses, commercial uses and other uses, which may include ground floor commercial uses such as a café and telecommunications uses on the rooftop, as well as accessory and ancillary uses thereto, all as set forth in the Application, and related streetscape improvements (the "Project"; together with the Project Area, the "Property");

WHEREAS, the Project will comprise a part of the Channel Center project, a mixed-use development containing office, research and development, residential, commercial and parking uses;

WHEREAS, the Project Area has a street address of 1 Iron Street and comprises City Assessing Department tax parcel number 06-02750-015 and a portion of tax parcel number 06-02757-020.

WHEREAS, the Property is expected to be leased to a single user that is expected to employ in excess of 4,000 employees at the Project, and demand for commercial services at the Channel Center project and in the Fort Point Channel neighborhood is expected to expand commensurately, thus spurring economic development and tax generation;

WHEREAS, the Applicant will lease the Project Area to an affiliate, AP One Channel Center LLC ("Developer") by means of a ground lease ("Ground Lease");

WHEREAS, the Ground Lease will require the Developer to develop the Project at the Project Area, and the Developer and an affiliate thereof, AP Channel Center Garage LLC

(“Garage Developer”) will also undertake other street, park and streetscape improvements in conjunction with the Project;

WHEREAS, in the Application, the Applicant sought approval for the creation of the Applicant as a Chapter 121A entity and for the development, financing and operation of the Project, as more particularly described in the Application, including, but not limited to (i) the acquisition by the Developer of a leasehold interest in the Project Area by means of the Ground Lease, and (ii) the construction of the Project and the financing, operation and maintenance of the same;

WHEREAS, on July 12, 2012, the Authority by vote adopted a Report and Decision (the “Report and Decision”) on the Project;

WHEREAS, the Mayor of the City (the “Mayor”) approved the aforesaid vote of the Authority on July 22, 2012;

WHEREAS, the Certificate of Vote of the Authority and the approval of the Mayor were filed with the office of the Clerk of the City of Boston on July 25, 2012, and such vote has become final and binding pursuant to the provisions of M.G.L. Chapter 121A, as amended and Chapter 652 of the Acts of 1960, as amended;

WHEREAS, in accordance with the Report and Decision, the Applicant has entered into a Regulatory Agreement with the Authority dated on or about even date herewith, with respect to the Property; and

WHEREAS, the Applicant and the City desire to enter into this Agreement pursuant to Sections 6A and 10 of M.G.L. Chapter 121A, as amended, for payments-in-lieu of taxes with respect to the Property.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the mutual promises hereinafter set forth, the Applicant and the City hereby agree, effective as of the Commencement Date (as defined in Section 2 below) as follows:

1. Project. The Applicant shall, subject to the provisions of Section 12 hereof, undertake all activities with respect to the Project or cause all activities with respect to the Project to be undertaken, in accordance with the Application, the provisions of Massachusetts General Laws Chapter 121A (“Chapter 121A”) as in effect as of the date hereof, and the Report and Decision, including without limitation, the Minimum Standards for the Financing, Construction, Maintenance and Operation of the Project referenced therein (collectively, the “Approval”), which are incorporated herein by reference. Such activities of the Applicant shall include entering into the Ground Lease, and causing the Project to be constructed, maintained, and operated as set forth in the Approval.

2. Term. Subject to the provisions of Section 12 hereof, this 6A Contract shall become effective on January 1, 2013 (the “Effective Date”), and shall expire on the fifteenth

(15<sup>th</sup>) anniversary of the Effective Date (the "Termination Date"). The period from the Effective Date until the Termination Date is hereinafter referred to as the "Term."

3. Excise Tax Payments. From and after the Effective Date, and subject to the terms and conditions of this 6A Contract, the Applicant shall pay to the Department of Revenue, or any successor department or agency of the Commonwealth of Massachusetts performing similar functions ("DOR"), with respect to each calendar year or portion thereof during the Term, the urban redevelopment excise required under Chapter 121A, Section 10, as amended from time to time (the "Excise Tax").

4. 6A Contract Amounts.

(a) Payment Amount: Annually during the Term, and subject to the terms and conditions of this 6A Contract, the Applicant shall pay to the City the amount (the "Differential"), if any, by which the following amounts (each, a "6A Contract Amount") exceed the Excise Tax for each calendar year: (i) for calendar year 2013, \$600,000, (ii) for calendar year 2014, \$900,000, and (iii) for calendar years 2015 to and including 2027, that amount calculated by multiplying the rentable square feet of the Project by the rate for each year and for the retail and non-retail components thereof, all as more particularly set forth on Exhibit B, attached hereto and incorporated herein. Within sixty (60) days after issuance of a Certificate of Occupancy for the full Project, the Applicant shall provide the City with a certification of the Project architect as to the rentable square footage by floor of the Project (which certification shall specify the rentable square footage of the retail and non-retail uses at the Project; the "Initial Certification"). Thereafter, each annual payment of the Differential shall be accompanied by a certification of the Applicant that the square footage of the Project (including the retail and non-retail components thereof) have not changed. If there has been a change, then the applicable annual Differential payment shall be accompanied by an architect's certification certifying to the new square footages, substantially in the form of the Initial Certification.

(b) Due Date: The first 6A Contract Amount or portion thereof, is due on or before April 1, 2014 (*i.e.*, for calendar 2013). Thereafter, each 6A Contract Amount or portion thereof, shall be made on or before April 1 following the end of each calendar year during the Term for which such a payment is due.

(c) Late Payments: Late 6A Contract Amounts and gap payments, or any portion thereof, shall bear interest at the rate allowed for in M.G.L. Ch. 60, as amended from time to time.

(d) Ownership of Improvements. The City and the Applicant agree that payments made under this 6A Contract shall be calculated as if the Applicant owned any and all improvements now or hereafter erected in the Project Area pursuant to or consistent with the Approval, and further, that such payments shall be in lieu of, and not in addition to, any tax payments which otherwise would be due under Chapter 59 of the Massachusetts General Laws from the Applicant for any improvements existing now or hereafter on the Project Area.

(e) Ch. 59 Payments: The Applicant shall be responsible for paying the real estate taxes assessed against the Property for the third and fourth quarters of fiscal year 2013. The amount of the real estate taxes paid may be deducted by the Applicant from the 6A Contract Amount of Six Hundred Thousand (\$600,000) Dollars due for calendar year 2013, Applicant shall provide notice of such deduction with its Differential payment for calendar year.

5. Gap Payment. Upon the termination of this 6A Contract, the Applicant shall pay or cause to be paid a gap payment to cover the time period between the Termination Date and the date on which the Property becomes taxable pursuant to Massachusetts General Laws, Chapter 59. The gap payment shall be equal to the 6A Contract Amount that would have been made for such period if the Property had remained subject to this 6A Contract, prorated accordingly. The gap payment shall be calculated by multiplying the rentable square footage of the Project by the calendar year 2027 rate, as shown on Exhibit B for each of the retail and non-retail components thereof. The gap payment shall be paid within six (6) months following the month in which this 6A Contract terminates. From and after the Termination Date, neither the Applicant nor the Property shall be subject to the obligations of Chapter 121A, enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations of this 6A Contract as provided in Chapter 121A; provided, however, that any deviations and permissions granted by the Authority pursuant to the Report and Decision, as the same may have been amended, shall remain in effect. The provisions of Sections 4.(c) and 5 shall survive the termination of this 6A Contract.

6. Financial Reporting.

(a) The Applicant shall file with the Commissioner of Assessing by February 10 following the end of each calendar year during the Term: (a) a statement of income and expenses, including line item detail, for the Project during the preceding calendar year or portion thereof, (b) a rent roll, and (c) a Declaration of Liability Return, a form made available by the Assessing Department.

(b) The Applicant shall file with the Commissioner of Assessing and the Collector -Treasurer of the City ("Collector-Treasurer") by April 1 following the end of each calendar year during the Term: (a) a Declaration of Liability Form, a form made available by the Collector-Treasurer; (b) a financial review by an independent certified public accountant, consisting of a statement of all rental and other income, operating costs, a statement of profit and loss, a balance sheet, and a statement of disposition of funds for the preceding year; and (c) a certified copy of the Applicant's Excise Tax Return as submitted to DOR.

7. Overpayments.

(a) Any Overpayment (as defined in Section 7(b)) by the Applicant with respect to any calendar year during the Term shall, at the election of the City, be either refunded or applied to reduce the 6A Contract Amount due in succeeding calendar years, except that with respect to the last calendar year; (or portion thereof,) in which the Property shall be subject to this 6A Contract, any Overpayment by the Applicant shall be refunded by the City to the Applicant as soon as practicable after the sending of a written notice to the City

by the Applicant of such Overpayment. Any such notice of Applicant shall be accompanied by adequate documentation evidencing the Overpayment, including without limitation, the date payment was made to the DOR and/or the City, the 6A Contract Amount and/or the Excise Tax payment made, and copies of cancelled checks, front and back, for both the DOR and the City. Said documents shall be provided within one hundred eighty (180) days of the date of such Overpayment.

(b) For the purposes of this 6A Contract, an “Overpayment” by the Applicant with respect to any calendar year shall include the following, but only to the extent that the following exceed collectively, the 6A Contract Amount due for that calendar year: (A)(i) amounts paid by the Applicant to the Commonwealth, the City or the Authority with respect to the Property pursuant to Sections 10, 15 and 18C of Chapter 121A, and (ii) any amounts paid by the Applicant to the City as real estate or personal property taxes pursuant to Massachusetts General Laws Chapter 59 or any successor statutes, with respect to the Project or the Project Area during the Term, (if any), or (B) amounts paid with respect to the Project or the Project Area as a different or additional tax resulting from the replacement of the current method of assessment of real estate taxes; provided, however, that such Overpayment shall not include the excise imposed by Massachusetts General Laws Chapter 64G, or any different or additional tax which does not result in the actual reduction of the City’s real estate tax levy, or (C) any amounts paid by the Applicant to the City with respect to the Property in excess of amounts actually due hereunder due to calculation error, inaccurate information or other inadvertent mistake.

8. Determination of Fair Cash Value. During the Term of this 6A Contract, the City of Boston Assessing Department shall determine the fair cash value of the Project in accordance with M.G.L. Chapter 121A, Section 10, such that the fair cash value shall be an amount which when used in the computation of the Excise Tax for or with respect to the previous calendar year, will result in an Excise Tax not greater than the 6A Contract Amount due for such prior calendar year. The City agrees to certify as to each of the foregoing fair cash value dates and amounts to DOR and the Applicant on or before March 1 of each year during the Term, pursuant to the second paragraph of Section 10 of Chapter 121A. The City acknowledges that the Property constitutes all the real and personal property of the Applicant for which it is required to establish a fair cash value under the provisions of Section 10 of Chapter 121A.

9. Amendments to Chapter 121A or Rules and Regulations. Notwithstanding any language to the contrary in the Application or any other document entered into between the Authority and the Applicant, no amendment or modification of the terms and conditions of this 6A Contract shall be binding on the City without the prior written consent of the City. The City and the Applicant further agree that without their mutual consent, any amendment subsequent to the delivery of this 6A Contract to any of the provisions of Chapter 121A, as amended to date, or of the Authority’s Rules, Regulations and Standards now applicable to the Property shall not affect this 6A Contract.

10. Successors/Assigns.

(a) The terms and conditions hereof shall be binding upon the successors and assigns of the Applicant. If this 6A Contract is assigned or transferred during the Term hereof, such successor or assign shall derive the benefits afforded hereunder only for the remainder of the Term of this 6A Contract. Notice shall be provided to the City within thirty (30) days of the Applicant's request to the Authority of its intention to transfer the Project and/or Project Area.

(b) The Applicant shall provide notice to the City of any assignment and assumption of this 6A Contract, which notice shall include contact information for the successor or assign.

11. Notices. All notices required or permitted pursuant to this 6A Contract shall be in writing, signed by a duly authorized representative or officer of the City or the Applicant, as the case may be, and shall be delivered by hand, sent by nationally recognized overnight delivery service, or mailed postage prepaid, by registered or certified mail, addressed as follows:

If to the City:

City of Boston Assessing Department  
One City Hall, Room 301  
Boston, Massachusetts 02201  
Attention: Commissioner of Assessing

If to the Applicant:

AP One Channel Center Owner LP  
c/o AREA Property Partners  
Two Manhattanville Road, Suite 203  
Purchase, New York 10577  
Attention: Brian Earle

With copies to:

AP One Channel Center Owner LP  
c/o AREA Property Partners  
60 Columbus Circle, 20th Floor  
New York, New York 10023  
Attention: Brian Earle

Edwards Wildman Palmer LLP  
111 Huntington Avenue  
Boston, Massachusetts 02199  
Attention: Rebecca A. Lee, Esq.

and

Shapiro & Gellert, PLLC  
651 Briarwood Court  
Oradell, New Jersey 07649  
Attention: Michael D. Gellert, Esq.

A different address may be designated by each party by giving written notice to the other party. Any such notice shall be deemed given when so delivered by hand or nationally recognized delivery service, or if mailed, two (2) business days after such notice is deposited with the U.S. Postal Service. Upon request of the Applicant, the City shall send copies of any notice delivered to the Applicant hereunder, to any mortgagee of the Applicant or the Developer.

12. Pre-Conditions to Obligations of the Applicant. The obligations of the Applicant under this 6A Contract and the Report and Decision are conditioned in all respects upon (i) the issuance of all permissions, variances, permits and licenses which may be required with respect to the construction, maintenance and operation of the Project, whether or not the same were specified in the Application, and (ii) the Property being exempt from taxation under Section 10 of Chapter 121A. The Applicant shall not be held responsible in any way for delays which may occur in the construction, repair and maintenance of the Project or otherwise, by reason of scarcity of materials or labor, labor difficulties, damage by fire or other casualty or any other cause beyond the Applicant's reasonable control. The Applicant agrees to use reasonable efforts to cause all such permissions, variances, permits and licenses to be secured and all such delays to be overcome.

13. Severability. If any provision of this 6A Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this 6A Contract and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

14. Counterparts. This 6A Contract may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

15. Governing Law; Venue. This 6A Contract shall be governed by the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of laws. Any suit, claim or action hereunder shall be brought in a court of competent jurisdiction in Suffolk County, Massachusetts.

16. Captions. Caption headings are inserted herein only as a matter of convenience and reference and in no way serve to define, limit, or describe the scope or intent of, or in any way affect, this 6A Contract.

17. Limitations on Liability. No officer, director, partner, employee or agent of Applicant nor of any affiliate thereof or their respective successors and assigns, shall have any personal liability under this 6A Contract. The liability of the Applicant hereunder shall be

limited solely to its interest in the Project. Subject to there being no outstanding notice of default issued by the Authority under the Regulatory Agreement or by the City pursuant to this 6A Contract, after any termination under Chapter 121A as to the Property, or transfer of the Project and the Project Area to another party, or termination or transfer of any portion thereof, each in accordance with the Report and Decision or as otherwise may be required to be approved by the Authority, the Applicant shall no longer be subject to the obligations hereof and shall have no further liability hereunder with respect to the Project, the Project Area or such portion thereof, as the case may be, the City agreeing to look solely to such transferee for the performance of the Applicant's obligations hereunder. Notwithstanding the foregoing, in accordance with Section 5 hereof, any deviations and permissions granted by the Authority pursuant to the Report and Decision, as the same may have been amended, shall survive the termination of this 6A Contract and the termination of the Property under Chapter 121A.

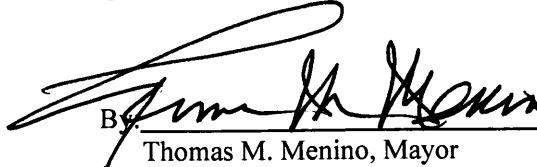
18. Recitals. The recitals set forth herein are incorporated as if fully re-stated.

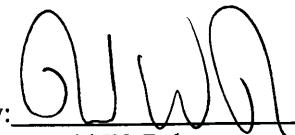
*[Signature Page Follows]*



EXECUTED as a sealed instrument as of the day first above written.

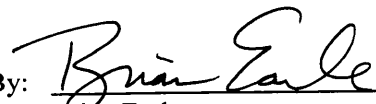
**CITY OF BOSTON**

By:   
Thomas M. Menino, Mayor


By:   
Ronald W. Rakow  
Commissioner of Assessing

**AP ONE CHANNEL CENTER  
OWNER LP, a Delaware limited  
partnership**

By: AP One Channel Center GP  
LLC, its General Partner

By:   
Brian Earle  
Vice President

APPROVED AS TO FORM:

  
William F. Sinnot, Esq.  
City of Boston Corporation Counsel *CNC*

Attachments:

- Exhibit A - Subdivision Plan of Project Area (Lot 15)
- Exhibit B - Schedule of 6A Contract Amounts

**Exhibit A**

**Subdivision Plan of Project Area (Lot 15)**

[See attached]



**Exhibit B**

**Schedule of 6A Contract Amounts**

<b>SCHEDULE B</b>				
<b>Year</b>	<b>Calendar Year</b>	<b>6A Contract NON-RETAIL</b>		<b>6A Contract RETAIL</b>
		<b>Payment Per Square Foot</b>	<b>6A Contract Payment Annual</b>	<b>Payment Per Square Foot</b>
1	2013		\$600,000	-
2	2014		\$900,000	-
3	2015	\$3.00		\$9.00
4	2016	\$4.00		\$9.36
5	2017	\$5.00		\$9.73
6	2018	\$5.50		\$10.12
7	2019	\$6.00		\$10.53
8	2020	\$6.50		\$10.95
9	2021	\$7.00		\$11.39
10	2022	\$7.50		\$11.84
11	2023	\$8.00		\$12.32
12	2024	\$8.50		\$12.81
13	2025	\$9.00		\$13.32
14	2026	\$9.50		\$13.86
15	2027	\$10.00		\$14.41