

**AMENDED AND RESTATED CONTRACT PURSUANT TO SECTION 6A OF  
CHAPTER 121A OF THE MASSACHUSETTS GENERAL LAWS**  
(St. Botolph Terrace Apartments)

This Amended and Restated Contract Pursuant to Section 6A of Chapter 121A of the Massachusetts General Laws (“**this New 6A Contract**”) is made as of this 30<sup>th</sup> day of July, 2014, pursuant to Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of the Commonwealth of Massachusetts, by and between MADISON BOTOLPH LIMITED PARTNERSHIP, a Massachusetts limited partnership (“**Madison Botolph**”) and the CITY OF BOSTON, a municipal corporation of the Commonwealth of Massachusetts (hereinafter called the “**City**”).

WITNESSETH THAT:

WHEREAS, St. Botolph Terrace Associates (the “**Original Applicant**”) filed with the Boston Redevelopment Authority (the “**Authority**”) an application (the “**Initial Application**”) dated February 13, 1979, under the provisions of Chapter 121A of the Massachusetts General Laws and Chapter 652 of the Massachusetts Acts of 1960, both as amended (collectively, “**Chapter 121A**”), for approval of the St. Botolph Terrace Apartments Project (the “**Project**”), as more particularly described in the Initial Application, including, but not limited to, acquisition of the Project Area (as defined in the Initial Application), and the rehabilitation, operation and maintenance by the Original Applicant of 52 dwelling units with appurtenant facilities, including commercial/office space, laundry room for lower income elderly persons and families; and

WHEREAS, the Authority approved the undertaking of the Original Project by the Original Applicant by a certain Report and Decision adopted by the Authority on May 3, 1979 (the “**Original Report and Decision**”); and

WHEREAS, the Mayor (“**Mayor**”) of the City approved the Authority’s Original Report and Decision on July 19, 1979; and the vote of the Authority and the approval of the Mayor were filed with the Office of the City Clerk on July 26, 1979, and such approval became final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, on October 16, 1979, the Original Applicant and the City entered into a “Contract Required By Section 6A of Chapter 121A of the General Laws” (the “**Original 6A Contract**”); and

WHEREAS, in order to obtain the Authority’s approval of the transfer of the Project to NUHousing Corp. (“**NUHousing**”), NUHousing and its sole member, Northeastern University (“**Northeastern**”), filed with the Authority, on July 18, 2007, an “Application For Approval Pursuant To Massachusetts General Laws Chapter 121A, Sections 11 And 18C, And The Massachusetts Acts Of 1960, Chapter 652, Section 13A, Both As Amended, Of The Transfer Of The Previously Approved And Developed St. Botolph Terrace

Apartments Chapter 121A Project To NU Housing Corp., A Charitable Corporation Organized Under Massachusetts General Laws Chapter 180, As Amended, And For Consent To Form And Authorization For Such Corporation To Act As An Urban Redevelopment Corporation Pursuant To Said Chapters 121A And 652 For The Purposes Of Acquiring And Carrying Out Such Project”, dated as of July 11, 2007 (the “**Initial Transfer Application**”); and

WHEREAS, the Authority approved the transfer of the Original Project to NUHousing by that certain “First Amendment To Report And Decision On The St. Botolph Terrace Apartments Chapter 121A Project For The Approval Under Massachusetts General Laws, Chapter 121A And The Acts Of 1960, Chapter 652, Both As Amended, Of The Transfer Of The Previously Approved And Developed St. Botolph Terrace Chapter 121A Project, And Consent To The Formation Of NU Housing Corp., As A New Urban Redevelopment Corporation Pursuant To Said Chapter 121A And Chapter 652 For The Purpose Of Acquiring And Carrying Out Of Such Project”, dated July 19, 2007 (the “**First Amendment to Report and Decision**”); and

WHEREAS, the Mayor approved the First Amendment to Report and Decision on July 20, 2007; and the vote of the Authority and the approval of the Mayor were filed with the Office of the City Clerk on July 24, 2007; and

WHEREAS, in connection with the First Amendment to Report and Decision, NUHousing and the City entered into a certain First Amendment to and Assumption of 6A Contract, dated September 11, 2008 (the “**First Amendment to 6A Contract**”, and, together with the Original 6A Contract, the “**6A Contract**”) whereby NUHousing assumed the obligations under the Original 6A Contract of the Original Applicant and the City agreed to NUHousing’s assumption of such obligations; and

WHEREAS, in order to obtain the Authority’s approval of the transfer of the Project to Madison Botolph, Madison Botolph and NUHousing filed with the Authority on April 5, 2013, an “Application For (A) Approval Pursuant To Massachusetts General Laws Chapter 121A, Sections 11 And 18C, As Amended, Of The Transfer Of The Previously Approved And Developed St. Botolph Terrace Apartments To Madison Botolph Limited Partnership, A Massachusetts Limited Partnership, And (B) Consent To A New Urban Redevelopment Limited Partnership Pursuant To Said Chapter 121A, For The Purpose Of Acquiring, Rehabilitating And Continuing The Use Of The St. Botolph Terrace Apartments As Affordable Housing”, dated as of April 5, 2013 (the “**Current Transfer Application**”); and

WHEREAS, the Authority approved the transfer of the Original Project by NUHousing to Madison Botolph by that certain “Second Amendment To Report And Decision On The St. Botolph Terrace Apartments Chapter 121A Project For The Approval, Under Massachusetts General Laws, Chapter 121A And The Acts Of 1960, Chapter 652, Both As Amended, Of The Transfer Of The Previously Approved And Developed St. Botolph Terrace Apartments Chapter 121A Project, And Consent To The Formation Of Madison Botolph Limited Partnership As A New Urban Redevelopment Limited

Partnership Pursuant To Said Chapter 121A And Chapter 652 For The Purpose Of Acquiring And Carrying Out Of Such Project”, dated April 11, 2013 (the “**Second Amendment to Report and Decision**”); and

WHEREAS, the Mayor approved the Second Amendment to Report and Decision on April 19, 2013; and the vote of the Authority and the approval of the Mayor were filed with the Office of the City Clerk on April 23, 2013; and

WHEREAS, in connection with the Second Amendment to Report and Decision, Madison Botolph has agreed to assume the obligations of NUHousing under the 6A Contract, and the City and Madison Botolph have agreed to amend and restate the 6A Contract to confirm and agree to such assumption and to make certain other changes thereto.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The 6A Contract is hereby terminated, and is replaced by this New 6A Contract.
2. **Agreement.** Madison Botolph hereby agrees with the City as follows:
  - (a) Madison Botolph will maintain and manage the Project in accordance with (i) the Current Transfer Application, (ii) the provisions of Chapter 121A, as now in effect, (iii) the Original Report and Decision, as modified by the First Amendment to Report and Decision and the Second Amendment to Report and Decision, and (iv) the Regulatory Agreement dated May 5, 2014, by and between Madison Botolph and the Authority (the “**Regulatory Agreement**”), all of which are incorporated herein by reference.
  - (b) Madison Botolph will perform all of the obligations which are set forth in the Regulatory Agreement, as required by the provisions of Chapter 121A.
  - (c) The obligations of Madison Botolph with respect to the payment of amounts under this New 6A Contract, the Current Transfer Application and/or the Original Report and Decision, as amended, are conditioned in all respects upon the Project being exempt from taxation under Section 10 of Chapter 121A.
3. **Excise Tax Payments.** Madison Botolph shall pay to the Commonwealth of Massachusetts, its Department of Revenue or any successor department or agency ("DOR"), with respect to each calendar year, or any portion thereof, that this Agreement is in effect and applicable, the Urban Redevelopment Excise Tax required under Chapter 121 A, Section 10, as amended from time to time (the "Excise Tax").
4. **6A Payments.** Madison Botolph hereby agrees to make payments to the City as follows:

- (a) *Amount.* Beginning with Calendar Year 2014 or a portion thereof, and for each calendar year, or portion thereof, thereafter in which this New 6A Contract is in effect, Madison Botolph shall pay to the City an amount (the “**6A Contract Payment**”), if any, by which the amounts hereinafter set forth exceed the excise payable for such calendar year, or portion thereof, pursuant to Section 10 of Chapter 121A as now existing:
  - (i) 10% of the Gross Residential Income received by the Partnership, as hereinafter defined; and
  - (ii) 30% of the gross commercial income received from commercial tenants, from whatever source derived.
- (b) “Gross Residential Income” shall mean the aggregate of the gross residential rentals received by the Partnership from whatever source derived, including the occupants of the Project, and all income received pursuant to a Housing Assistance Payments Contract with the United States Department of Housing and Urban Development, pursuant to section 8 of the Housing Act of 1937, as amended, or any similar successor subsidy program.
- (c) The above formula for determining the 6A Contract Payment is expressly contingent on the Project being used exclusively for multifamily residential rental housing and associated common areas and amenities.
- (d) *Due Date:* Madison Botolph shall pay to the City the 6A Contract Payment on or before April 1 following the end of each calendar year for which such payment is due.
- (e) *Partial Payments:* 6A Contract Payments shall be equitably pro-rated for any partial year during the term set forth in paragraph 12.
- (f) *Late Payments:* Late 6A Contract Payments and Gap Payments, or any portion thereof, shall bear interest at the rate allowed for in G.L. c. 60, as amended from time to time. Furthermore, all amounts payable pursuant to this 6A Contract, if unpaid, shall be collectable in accordance with M.G.L. chapter 60 and chapter 121A, section 6A.
- (g) Without limiting the foregoing, it is the intent of the parties hereto that Madison Botolph shall for any calendar year discharge its contractual obligations pursuant to this contract prior to the distribution to Madison Botolph of any return on its investment in the Project.

5. **Delivery and Examination of Financial Statements.**

- (a) Madison Botolph shall file with the Commissioner of Assessing by February 10 following the end of each calendar year during which this Agreement is in effect: (a) a statement of income and expenses for the

Project during the preceding calendar year, or portion thereof, a (b) a Declaration of Liability Return, a form made available by the Assessing Department.

- (b) Madison Botolph 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 which this Agreement is in effect the following: (a) a Declaration of Liability Form, a form made available by the Collector-Treasurer; (b) an audited report, prepared by a 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 Madison Botolph 's Excise Tax Return as submitted to DOR.
- (c) Madison Botolph hereby authorizes the Commissioner of Assessing, or a representative of the Commissioner designated in writing, to examine from time to time all urban redevelopment excise tax returns and attachments thereto filed by Madison Botolph with the DOR. No further evidence of this authorization shall be required. In addition Madison Botolph shall provide to the City a copy of any filing made to the DOR within 30 days of such filing. For all payments made to the DOR, Madison Botolph will provide a detailed breakdown indicating what portions of the payment, if any, were for penalties or interest, including the ward and parcel number to which those payments were applied.

6. **Audit.** Furthermore, the City can make an annual audit of all financial records pertaining to the operations of the Project under its 121A status and can engage the services of a private accounting firm to undertake such an audit at the expense of Madison Botolph.

If Madison Botolph is found to have deliberately withheld information on or misrepresented collection from the Project, relative to its payments in-lieu-of taxes, Madison Botolph will be required to pay all arrearages plus interest on that amount owed the City (with interest rate equal to the rate charged in delinquent property tax accounts by the City's Assessing Department), and in addition will be required to pay and/or reimburse the City for all expenses incurred as a result of the situation.

7. **Gap Payment.** Upon the termination of this New 6A Contract Madison Botolph shall pay or cause to be paid a gap payment to cover the time period between the termination date of this New 6A Contract and the date the Project becomes taxable pursuant to General Laws, Chapter 59. The gap payment shall be equal to the payment under this New 6A Contract that would have been made for such period if the Project had remained subject to this New 6A Contract. The gap payment shall be paid within six (6) months following the month in which this New 6A Contract terminates. The Project thereafter shall not be subject to the obligations of Chapter 121A, or enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations

of this New 6A Contract, as provided in Chapter 121A; provided, however, the deviations and permissions granted by the Authority pursuant to the Original Report and Decision, as amended, shall survive such termination and shall remain in effect.

8. **Overpayments.** Any Overpayment (as defined below) applicable to a calendar year, or portion thereof, shall at the election of the City, be either refunded or applied to reduce the payments due in succeeding calendar years, except with respect to the last calendar year, or portion thereof, in which the Project shall be subject to this Agreement, any Overpayment by Madison Botolph shall be refunded by the City. For purposes of this Agreement, an "Overpayment" shall include the following, to the extent that they exceed collectively the 6A Contract Amount: (i) any amounts paid by Madison Botolph to the City as real estate taxes pursuant to Chapter 59; (ii) any amounts paid by Madison Botolph under Chapter 121A, Section 15; and (iii) any amounts paid by Madison Botolph to the Commonwealth of Massachusetts, or any political subdivisions thereof, under any general or special law, as an excise or tax measured by its income from or investment in the Project, not including the excise prescribed by Chapter 121A, Section 10. If the Overpayment is due to the Madison Botolph's failure to provide the financial information required by this contract or to the Partnership's intentional provision of misleading financial information then no refund will be issued and the Overpayment will not be applied to reduce payments due in succeeding calendar years.
9. **Conditions/Delays.** The obligations of Madison Botolph under this New 6A Contract are conditions in all respects upon the issuance to them of all permissions, including without limiting the generality of the foregoing: maintenance and management of the Project, as specified in the Current Transfer Application or reserved therein. Madison Botolph shall not be held in any way liable for delays which may occur in the maintenance or management 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 Madison Botolph's reasonable control.
10. **Amendment/Extension.** Madison Botolph and the City further agree that without written approval of both parties any amendment, subsequent to the execution of this New 6A Contract, of the provisions of M.G.L. Chapter 121A, as now amended or the rules and regulations and standards prescribed by the Authority now applicable to the Project shall not affect the Project.
11. **Transfer.** If Madison Botolph or any mortgagee of the Project proposes, acting either under the provisions of the last paragraph of Section 11 or under Section 16A of said Chapter 121A, to transfer the Project to a different entity, Madison Botolph shall be released from all obligations under this contract and under said Chapter 121A and at the time shall be divested of all powers, rights and privileges conferred by this New 6A Contract and said Chapter 121A.
12. **Binding Effect.** The provisions of this contract shall be binding upon and inure to

the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, except that nothing herein contained shall apply in the event a successor in interest elected under option 3 under the provisions of Section 16A of said Chapter 121A as now in effect and that in case of a transfer as contemplated by Section 10 of this New 6A Contract, Madison Botolph shall thereupon cease to be liable hereunder.

13. **Termination.** This New 6A Contract shall terminate on the scheduled termination date of the Project's Chapter 121A status of July 26, 2019.
14. **No Personal Liability.** No member, director, or officer of Madison Botolph shall have any personal liability for the performance of the obligations of Madison Botolph hereunder.
15. **Notices.** All notices required pursuant to this New 6A Contract shall be in writing and delivered by hand or mailed postage prepaid, by registered or certified mail, addressed as follows:

Madison Botolph: Madison Botolph Limited Partnership  
c/o Madison Park Development Corporation  
184 Dudley Street  
Boston, MA 02119  
Attention: Jeanne Pinado and Russell Tanner

With Copy to: Cumsky & Levin LLP  
6 University Road  
Cambridge, MA 02138  
Attention: Marc Cumsky, Esq.

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


And in the case of either party to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or, if so mailed, two (2) days after such notice is deposited with the U.S. Postal Service.

**[Remainder of page intentionally left blank – signatures appear on the next page]**

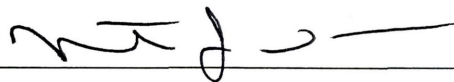
EXECUTED as a sealed instrument the day and year first above written.


MADISON BOTOLPH LIMITED  
PARTNERSHIP

By: Madison Botolph GP, Inc.

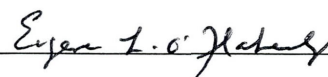
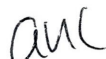
By:   
Name: Jeanne Pinado  
Title: Executive Director  
Hereunto duly authorized

CITY OF BOSTON

By:   
Martin J. Walsh, Mayor

By:   
Ronald W. Rakow, Commissioner of  
Assessing

Approved as to form by:

  
Corporation Counsel 

EUGENE L. O'FLAHERTY