

CONTRACT REQUIRED BY SECTION 6A
OF CHAPTER 121A OF THE GENERAL LAWS

AGREEMENT made this 18 day of September, 1978, by and between Peterborough Housing Associates, a limited partnership organized pursuant to Mass. G.L. c. 109 (the "Owner"), and the CITY OF BOSTON, a municipal Corporation of the Commonwealth of Massachusetts (the "City"); acting under Massachusetts General Laws Chapter 121A, section 6A, and every other power and authority hereto enabling.

WITNESSETH THAT:

WHEREAS, there has been filed on behalf of the Owner with the Boston Redevelopment Authority of the Commonwealth of Massachusetts (the "Authority") an application dated January 30, 1978, (the "Application") under the provisions of Massachusetts General Laws, Chapter 121A, as amended, and Chapter 652 of the Acts of 1960, as amended, for approval of a project situated in the City of Boston, said project being more particularly described in paragraph 4 of said Application and in the metes and bounds description of said Application (the "Project");

WHEREAS, the Application sought the approval of the Authority of a project involving 220 dwelling units and ancillary community space (the "Project");

WHEREAS, the Authority approved the Project by a vote on

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on _____; and

WHEREAS, the Certificate of Vote of the Authority and the approval of the Mayor of the City of Boston were filed with the office of the City Clerk on _____

NOW, THEREFORE :

1. The Owner hereby agrees with the City as follows:

(a) To carry out the Project by rehabilitating, maintaining and managing the same in accordance with the Application, the provisions of Massachusetts General Laws, Chapter 121A, as now in effect, the Rules and Regulation of the Authority, as now in effect, and the Minimum Standards for Financing, Construction, Maintenance and Management of the Project, all as set forth in the Report and Decision of the Authority approving said Project.

(b) To perform all of the obligations as Owner under the Regulatory Agreement required pursuant to the provisions of Massachusetts General Laws, Chapter 121A, section 18C.

(c) To pay to the Commonwealth of Massachusetts with respect to each year that this contract is in full force and effect, the urban redevelopment excise tax required under Section 10 of said Chapter 121A.

(d) To pay to the City of Boston with respect to each of the calendar years this contract is in effect as hereinafter defined in 8, next following the year the Project is subject to said Chapter 121A, the respective amount, if any, by which the amounts hereinafter set forth exceed the excise payable for such calendar year pursuant to Section 10 of said Chapter 121A as now existing:

(i) With respect to each such calendar year prior to and including the calendar year in which completion of the Project, as hereinafter defined, shall occur, twenty thousand dollars (\$20,000.00) plus ten percent (10%) of residential income from the Project as hereinafter defined in subparagraph (d) (ii).

For purposes of this Agreement, the phrase, "completion of the Project" means certification of 100% completion from the appropriate funding source; i. e., HUD or FHA and/or occupancy of 90% of the dwelling units.

(ii) With respect to each such calendar year next following the calendar year in which completion of the Project, as hereinbefore defined, occurs through the fortieth year during which the Project is subject to the provisions of said Chapter 121A, ten percent (10%) of residential income from the Project, as hereinafter defined, but in no event more for any calendar year than the amount which would have been payable to the City of Boston had the real estate and improvements thereon in the Project Area and the tangible personal property of the Owner used in connection with the operation of the Project not been exempted from taxation.

Notwithstanding the foregoing, Owner agrees that commencing in the third calendar year subsequent to completion of the Project, and every third year thereafter, the percentage of residential income payable by Owner shall be such increased percentage as shall be determined by the Commissioner of Assessing of the City of Boston based on substantial general increases in real estate taxes in the City of Boston, provided that no such increased percentage shall exceed by more than one percent (1%) the last applicable percentage of residential income except that the first such increase may be in an amount up to two percent (2%), and in no event shall such percentage exceed fifteen percent (15%). Except as provided in the following paragraph, Owner's obligation to pay any such increased percentage of residential income in excess of twelve percent (12%) shall be conditioned upon approval and funding of a special rent adjustment therefor by the United States Department of Housing and Urban Development ("HUD") pursuant to statutes and regulations of HUD governing the Section 8 rental assistance program, or any successor program thereto, which approval Owner hereby undertakes to secure. The City hereby acknowledges that pursuant to said statutes and regulations, Owner may not, for the purpose of paying any increased percentage of residential income pursuant to this Section 1(d) (ii), adjust the rentals charged for any dwelling unit in the project above rent levels approved by HUD and that revised rent levels resulting from HUD approved and funded adjustments shall not result in HUD's judgment in material differences between rents charged for units receiving rental assistance and comparable unassisted units.

Notwithstanding the foregoing, the parties hereto agree that with respect to the third through ninth calendar years following completion of

the Project the Owner's obligation to make payment hereunder of any increased percentage of residential income from ten percent (10%) to twelve percent (12%) shall be reduced to the extent that the Project would suffer an operating loss by virtue of the obligation to make payment of such increased percentage. For any calendar year subsequent to such ninth calendar year following completion of the Project or subsequent to the calendar year in which the Owner shall have paid to the City twelve percent (12%) of residential income from the project, whichever shall first occur, if HUD shall not have approved and funded any percentage increase of residential income payable by Owner in excess of twelve percent (12%), Owner shall nevertheless pay to the City so much of such increased percentage of residential income as the Project can sustain without suffering an operating loss. Without limiting the foregoing, it is the intent of the parties hereto that the Owner shall for any calendar year discharge the contractual obligation pursuant to this Section 1(d) (ii) prior to the distribution to Owner of any return on its investment in the Project. For purposes of this paragraph, whether the Project would suffer an operating loss, and the amount thereof, shall be determined by the certified operating statement submitted by Owner to HUD for the fiscal year to which such increased percentage would be applicable, adjusted for all non-cash items and for payments of mortgage amortization, capital acquisitions and the establishment of reserves accepted by HUD.

Any payments which may become due to the City of Boston on account of the provisions of this Section 1(d) shall be paid to the City of Boston on or before the first day of April of the year next following the year with respect to which such payment is made. Any overpayment applicable to one calendar year shall, at the election of the City be either refunded or applied to reduce the payments due in the succeeding calendar years except that with respect to the last calendar year in the forty-year period referred to above any overpayment by the Owner shall be refunded by the City. For purposes of this contract, an overpayment by Owner hereunder shall include any amounts paid by the Owner to the City of Boston as real estate taxes pursuant to Massachusetts General Laws, Chapter 59, with respect to the Project Area for any period during which this contract is in effect, whether assessed to Owner or to any predecessor in title of the Project Area.

Notwithstanding the foregoing provisions: (i) any payments due by the Owner with respect to any calendar year pursuant to the provisions of Section 15 of said Chapter 121A, as now or hereafter in effect, shall reduce the payments due with respect to such calendar year by the Owner pursuant to the provisions of this contract, but shall not reduce

the payments prescribed by Section 10 of said Chapter as now in effect; (ii) if the Owner shall in any year pay to the Commonwealth of Massachusetts or any political subdivisions thereof, any excise or tax measured by the Owner's income from or investment in the Project additional to the excise provided for by Section 10 of said Chapter 121A as now in effect, with applicable amount stated in or computed in accordance with the preceding paragraphs of this contract shall be reduced by the amount of such additional excise tax.

(e) To file with the Assessors within fifteen (15) days of the end of each calendar year during which this contract is in effect a statement of the income and expenses of the Project and the amounts invested in the rehabilitation of the Project.

(f) To file with the Assessors within ninety (90) days of the end of each calendar year during which this contract is in effect an audited report, prepared by a Certified Public Accountant, consisting of a statement of profits and loss, a balance sheet, and a statement of receipts and disbursements for the preceding calendar year, and a certified copy of the Owner's urban redevelopment excise tax return as submitted to the Department of Corporations and Taxation.

(g) To submit to the Commissioner of Assessing or his designated representative written authorization to examine all urban redevelopment excise tax returns and attachments thereto filed by the Owner with the Department of Corporations and Taxation.

1A. The phrase, "residential income from the Project" shall be deemed to mean the aggregate of the gross basic rentals received by the Owner from whatever source derived, including the occupants of the Project and all income received by the Owner pursuant to a Housing Assistance Payments Contract with the U.S. Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended, or any similar successor subsidy program (subsidy income).

The undersigned Assessors of the City of Boston pursuant to the authority conferred upon them by Section 10 of Chapter 121A of the General Laws, hereby determine that the following shall be the maximum fair cash value of the various stages of the Project hereinafter set forth, and agree that the values certified to the State Tax Commission and to the Owner pursuant to the second paragraph of said Section 10 of Chapter 121A in each of the calendar years below indicated shall not exceed the maximum fair cash values herein set forth:

(a) Construction Stage - January 1, 1979, through and including the first day of January of the calendar year next following the calendar year in which the completion of the Project, as hereinbefore defined in Section 1(d), occurs: Seventy-five Thousand Dollars (\$75,000.00).

(b) Final Stage: The final stage shall commence on the first day of January following the termination of the Construction Stage and shall continue until the first day of January of the last calendar year during which the Project is subject to this 6A contract: Three Hundred Fifty Thousand Dollars (\$350,000.00).

2. Furthermore, the City and/or the Authority 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.

If the Owner is found to have deliberately withheld information on or misrepresented collection from the Project, relative to its payments in lieu of taxes, the Owner 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, including the cost of the audit, incurred as a result of the situation.

3. The Assessors agree at all times to cause information required to be submitted to the State Tax Commission under said Chapter 121A to conform to the provisions of this Agreement.

4. The obligations of the Owner under this contract are conditioned in all respects upon the issuance to them of all permissions, including without limiting the generality of the foregoing: all variances, permits and licenses which may be required with respect to the construction, maintenance and management of the Project, as specified in the application or reserved therein, and the closing of the mortgage loan for the Project. The Owner shall not be held in any way liable for delays which may occur in the construction, repair, 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 the Owner's reasonable control.

5. The Owner and the City further agree that without written approval of both parties any amendment, subsequent to the execution of this contract, of the provisions of 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.

6. If the Owner of any mortgagee of the Project propose, 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, Sections 1 (a) through 1 (c) inclusive, and Sections 3 through 8 inclusive, of the Contract shall, upon such transfer, be assignable to any transferee or at the option of the Owner or mortgagee as appropriate, terminable by giving written notice to the City provided, however, that in the event of such assignment the assignee shall agree to such modifications in Section 1 (d) hereof as may be required by the City. In the

event of such a termination, the Owner 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 agreement and said Chapter 121A.

7. 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 elects option 3 under the provisions of Section 16A of said Chapter 121A as now in effect and that in case of a transfer or termination as contemplated by Section 6 of this contract, the Owner shall thereupon cease to be liable hereunder.

8. The term of this contract shall be for a period that is coterminous with the Housing Assistance Payments Contract between Owner and HUD under the Section 8 program or a similar contract or commitment under any successor subsidy program, provided however; that if at any time during the term of this contract, less than 85% of the dwelling units in the project are receiving housing assistance, then this contract will be null and void and a new 6A Agreement will be entered into to reflect this change; or the property will be taxed on the basis of the fair market value at that time.

9. No General or Limited Partner of Peterborough Housing Associates shall have any personal liability for the performance of the obligations of Peterborough Housing Associates hereunder.

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

PETERBOROUGH HOUSING ASSOCIATES
By: Wingate Development Corp.
General Partner

By [Signature]

By _____

ASSENTED TO:

By [Signature]
Commissioner of Assessing

CITY OF BOSTON

By [Signature]
Kevin H. White, Mayor

APPROVED AS TO FORM:

By [Signature]
Corporation Counsel

1978

**AMENDMENT TO 6A CONTRACT BETWEEN
PETERBOROUGH HOUSING ASSOCIATES A/K/A
PETERBOROUGH HOUSING ASSOCIATES LIMITED PARTNERSHIP
AND THE CITY OF BOSTON
PURSUANT TO SECTION 6A OF
CHAPTER 121A OF THE GENERAL LAWS**

AMENDMENT (the "Amendment") made this 8th day of March, 2002, by and between **PETERBOROUGH HOUSING ASSOCIATES A/K/A PETERBOROUGH HOUSING ASSOCIATES LIMITED PARTNERSHIP**, a limited partnership organized pursuant to Massachusetts General Laws Chapter 109 (the "Owner") and **CITY OF BOSTON**, a municipal corporation of the Commonwealth of Massachusetts (the "City"), acting under Massachusetts General Laws, Chapter 121A, Section 6A, as amended, and every other power and authority hereto enabling. Collectively, the Owner and the City are hereinafter referred to as the "Parties".

WITNESSETH THAT:

WHEREAS, the Owner filed with the Boston Redevelopment Authority (the "Authority"), an application dated January 30, 1978 (the "Application") pursuant to the provisions of Chapter 121A of the Massachusetts General Laws, Chapter 652 of the Acts of 1960 and the Rules and Regulations issued by the Authority, for approval of a development situated in the City of Boston (the "Project"), and

WHEREAS, the Authority approved the Project by a vote on June 15, 1978, and

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on July 12, 1978, and

WHEREAS, the certificate of vote of the Authority and the approval of the Mayor of the City of Boston have become final and binding pursuant to the provisions of the said Chapter 121A of the Massachusetts General Laws, Chapter 652 of the Acts of 1960 and the Rules and Regulations of the Authority and were filed with the office of the City Clerk on July 19, 1978.

NOW, THEREFORE, the Parties agree as follows:

The 6A Contract is amended by:

1. Deleting the first three paragraphs under Section 1(d)(ii) on Pages 3 and 4 and inserting the following paragraph:

The City agrees that commencing with the filing of the 2001 Urban Redevelopment Excise Tax Return and through the filing of the 2018 Urban Redevelopment Excise Tax Return, the fair cash value to be certified by the Assessor(s) pursuant to Section 10 of said Chapter 121A will be \$350,000.00. Further for the period commencing with the filing of the 2001 Urban Redevelopment Excise Tax Return and through the filing of the 2018 Urban Redevelopment Excise Tax Return, **PETERBOROUGH HOUSING ASSOCIATES A/K/A PETERBOROUGH HOUSING ASSOCIATES LIMITED PARTNERSHIP** shall pay to the **CITY of BOSTON** a 6A payment in an amount equal to the following percentages of the residential income derived from the Project as follows:

- 7% calendar years 2001 and 2002
- 8% calendar years 2003 - 2006
- 8.5% calendar years 2007 - 2010
- 9% calendar years 2011 - 2013
- 9.5% calendar years 2014 - 2016
- 10% calendar years 2017 - 2018

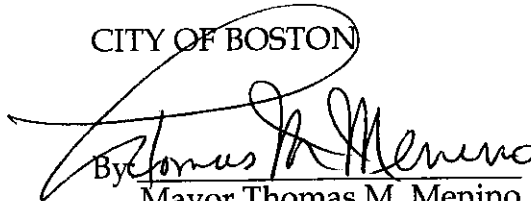
The above payments payable to the City of Boston commonly known as the 6A payment will be due and payable to the extent that the amounts exceed the excise tax prescribed for each such calendar year by M.G.L. Ch. 121A, §10 as now existing.

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

PETERBOROUGH HOUSING
ASSOCIATES A/K/A
PETERBOROUGH HOUSING
ASSOCIATES LIMITED
PARTNERSHIP

By: 
Gerald Schuster, General Partner

CITY OF BOSTON

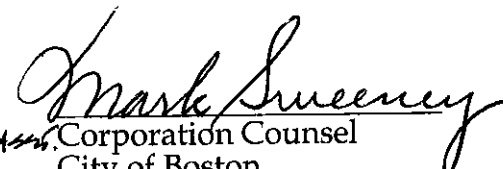

By: Thomas M. Menino
Mayor Thomas M. Menino

ASSENTED TO:



Ronald Rakow
Commissioner of Assessing

APPROVED AS TO FORM:



Mark Sweeney
Corporation Counsel
City of Boston