

Contract Between the City of Boston
and
Post Office Square Redevelopment Corporation
Pursuant to Section 6A of Chapter 121A
of the Massachusetts General Laws

This Agreement made this 29 day of January, 1987, under Sections 6A, 10 and 15 of Chapter 121A of the General Laws of the Commonwealth of Massachusetts is by and between Post Office Square Redevelopment Corporation, a corporation formed under the laws of the Commonwealth of Massachusetts, (hereinafter called the "Corporation") and the City of Boston, a municipal corporation of the Commonwealth of Massachusetts (hereinafter called the "City").

WITNESSETH THAT:

WHEREAS, Friends of Post Office Square, Inc. has caused to be filed with the Boston Redevelopment Authority (the "Authority") an application dated November 14, 1984, (such application, as amended as described below, is hereinafter called the "Application") under the provisions of said Chapter 121A of the General Laws and of Chapter 652 of the Acts of 1960, as amended (collectively, "Chapter 121A"), for consent to form the Corporation and for approval of a project (the "Project"), more particularly described in the Application, consisting of the construction of an underground parking garage and grade level urban open space (the "Redevelopment Improvements") in the Project Area (as defined in the Application); and

WHEREAS, the Authority approved the Project and consented to the formation of the Corporation by vote on May 10, 1984; and

WHEREAS, the Mayor of the City approved the Authority's approval on October 4, 1984.

WHEREAS, the vote of the Authority and the approval of the Mayor of the City were filed with the office of the City Clerk on January 17, 1986 and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Corporation was formed by filing its Articles of Organization and a certificate of the Authority evidencing such approval and consent in the Office of the Secretary of the Commonwealth of Massachusetts on January 23, 1986, in accordance with the provisions of Chapter 121A; and

WHEREAS, the Authority approved a First Amendment to the Application dated December 23, 1985, by vote on April 3,

1986, and a Second Amendment to the Application dated October 17, 1986, by vote on October 22, 1986; and

WHEREAS, the Mayor of the City approved the Authority's approval of the First Amendment to the Application on June 5, 1986, and the Authority's approval of the Second Amendment on November 7, 1986. The vote of the Authority and the approval of the Mayor with respect to the First and Second Amendments were filed with the office of the City Clerk on June 6, 1986 and November 7, 1986, respectively.

NOW, THEREFORE:

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

(a) To carry out the Project and cause the Project to be constructed, maintained and managed in accordance with the Application, the provisions of Chapter 121A of the General laws as now in effect, and of Chapter 652 of the Acts of 1960 as now in effect, the Minimum Standards for the Financing Construction, Maintenance and Management of the Project (the "Standards") set forth in the Report and Decision of the Authority approving the Project, as it may be amended, (the "Report and Decision"), the Development Agreement entered into by and among the Corporation, the City and the Authority (the "Development Agreement"), any Regulatory Agreement entered into with respect to the Project and any other agreement with the City and Authority, or either, relating to the Project, all of which are incorporated herein by reference.

(b) To pay to the Commonwealth of Massachusetts for each calendar year during which the Project is subject to Chapter 121A, the urban development excise required under Section 10 of 121A.

(c) Subject to the provisions and limitations of this Agreement, to pay with respect of each of the calendar years during which the Project is subject to Chapter 121A and during which the Corporation or its lessee operates the garage portion of the Project, the Net Proceeds of the Corporation computed as hereinafter set forth (the "Net Proceeds") for the year preceding the year in which such payment is due. The provisions of this subparagraph 1(c) will apply to Net Proceeds generated by the Project only, and not to any revenues generated from the operation of the existing garage located in the Project Area, and will not have any effect prior to the date on which the garage portion of the Project is placed in service. Net Proceeds shall be defined as:

(i) the gross income of the Corporation, which for purposes of this Agreement and Section 10 of

Chapter 121A shall be all income of the Corporation actually received in any calendar year, including the rent actually received by the Corporation under the proposed ground lease, as described in the Application; less

- (ii) the cost of maintenance of the open space portion of the Project (as such maintenance is described and provided for in the Development Agreement) and all taxes or other costs levied by any state, local or federal governmental authority (including obligations pursuant to G.L. c. 121A, §10) and payable by the Corporation with respect to such year or payable with respect to a prior year and paid in such year (provided that such amounts have not previously been applied to reduce Net Proceeds). The Corporation agrees that it will make all reasonable efforts to notify the City of the amount of all such taxes and other costs and to minimize the amount of such payments, which efforts will include contesting the amount of such payments, if appropriate.

As part of the review of the financing plan to be submitted by the Corporation to the City under the Development Agreement, the City may require that this paragraph 1(c) be amended to provide for a portion of the amounts payable to the City to be unsubordinated to debt service, if in connection with such review it determines that notwithstanding such priority payment the Project may be financed solely from revenues of the Project.

(d) To cause to be filed with the Assessing Department of the City of Boston (the "Assessing Department") within ninety (90) days of the end of each calendar year during which this agreement is in effect a statement of the income and expenses of the Project, and the amount invested in the construction of the Project.

(e) To file with the Assessing Department within ninety (90) days of the end of each calendar year during which this Agreement is in effect an audited report with respect to the Corporation, prepared by an independent Certified Public Accountant, consisting of a statement of profit and loss, a balance sheet, a statement of receipts and disbursements for the preceding calendar year, and a certified copy of the Corporation's urban redevelopment excise tax return as submitted to the Department of Revenue.

(f) To submit to the Commissioner of Assessing or a designated representative written authorization to examine all urban redevelopment excise tax returns and attachments

thereto filed by the Corporation with the Department of Revenue.

2. If in connection with the City's review of the financing plan the City determines that an additional amount above that required to be paid under paragraph 1(c) hereof may be paid by the Corporation to the City at the time of the closing of the construction financing for the Project, and that notwithstanding such payment the Project may be financed solely from the revenues of the Project, the City may require the Corporation to pay to the City from the proceeds of the construction financing such portion of such additional amount as the City deems to be in the best interest of the City.

3. Any amount payable under Paragraph 1(c) hereof shall be paid in accordance with the following schedule:

(a) To the extent that such payment in any calendar year is equal to or less than Two Hundred Fifty Thousand Dollars (\$250,000.00), twenty percent (20%) of such payment shall be paid to the collector of the City for deposit in the general fund of the City, and eighty percent (80%) of such payment shall be paid as a gift or grant to The Fund for Parks and Recreation in Boston (the "Park Trust") created by instrument dated February 25, 1983, a copy of which is attached hereto.

(b) To the extent that such payment in any calendar year exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), eighty percent (80%) of such excess shall be paid to the collector of the City for deposit in the general fund of the City, and twenty percent (20%) of such excess shall be paid to the Park Trust.

(c) In the event that the Park Trust is terminated, or if under applicable law payments hereunder cannot be made to it, payments required to be made to the Park Trust under this Agreement shall be made in accordance with an amendment to this Agreement or, during any period in which there is not such amendment providing for the disposition of such funds, to the collector of the City.

4. Except as otherwise herein provided, any payment which may become due to the City with respect to any calendar year pursuant to the provisions of this Agreement shall be paid in or within thirty days from the date of filing of the Corporation's urban redevelopment excise return with the Commonwealth of Massachusetts with respect to such calendar year.

5. The Corporation intends to enter into a lease of the land or improvements within the Project Area which provides for rental payments to the Corporation based in whole or in part on income from operations of the proposed

garage, and agrees with the City that such lease shall require the lessee thereunder to submit to the Assessors within ninety (90) days of the end of each calendar year for which this Agreement and the lease are in effect an audited report, prepared by an independent Certified Public Accountant, consisting of a statement of profit and loss from garage operations, a balance sheet, a statement of receipts from garage operations and related disbursements for the preceding calendar year, and such other financial information as the Assessing Department reasonably may require. At the request of the Assessor, the Corporation shall enforce the lease provisions regarding provision of records to the Assessor. The cost of such enforcement shall be a deduction from Net Proceeds as defined in Paragraph 1 (c). At the request of the Assessors the Corporation shall deliver to the Assessors such additional information concerning the operation of the Project and the finances of the Corporation as the Assessors may from time to time require.

6. The obligations of the Corporation under this Agreement and the Application are conditioned in all respects upon the receipt of all necessary approvals under Chapter 121A and acquisition by the Corporation of the real property on which the Project is to be constructed.

7. The Authority has extended the fifteen-year period of exemption from taxation for the Project to forty years, under the provisions of Chapter 121A, Section 10. Subject to the agreements, instruments and documents referred to in Paragraph 1(a) hereof, the Corporation and the City agree that, after notice to the Authority and the City, the Corporation, subject to the Report and Decision, may terminate the period of tax exemption, pursuant to the second paragraph of Section 6A of Chapter 121A. Upon such election, the Corporation shall have the rights, privileges and duties of a corporation subject to Chapter 156 of the General Laws. The Corporation and the City agree that in the event of such a termination, and until such time as the 121A status of the Corporation would have expired but for the provisions of this paragraph, the Corporation shall pay to the City with respect to each calendar year the amount, if any, by which the amount which would have been payable under Section 10 of Chapter 121A and the provisions of this Agreement exceeds the amount paid to the City in such year as taxes on the Project, and that such payment shall be made in accordance with the provisions of Paragraph 3 hereof. Upon termination of the Corporation's ownership of the Project in accordance with the Report and Decision and the agreements referred to herein, the Corporation's payment obligations hereunder will terminate.

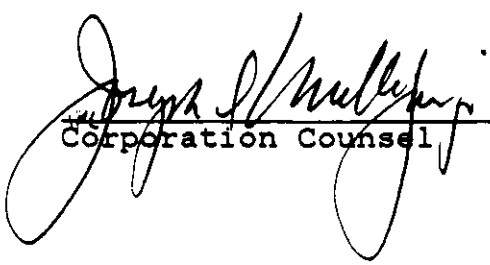
8. The Corporation and the City agree with each other that, without mutual consent, any amendment subsequent to the delivery of this contract of any of the provisions of Chapter

121A of the General Laws or of Chapter 652 of the Acts of 1960 or of the Rules and Regulations or Standards now applicable to the Project shall not affect this Agreement.

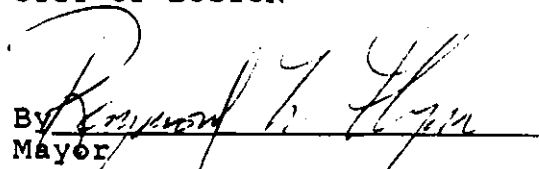
9. Subject to the provisions of Chapter 121A, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

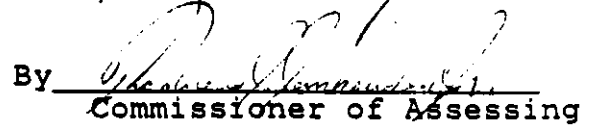
Executed as a sealed instrument as of the day and year first above written.

Approved as to form:

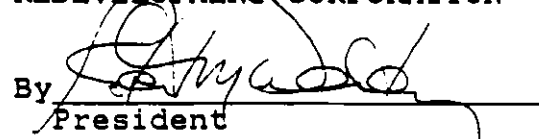

Corporation Counsel

CITY OF BOSTON

By 
Mayor

By 
Commissioner of Assessing

POST OFFICE SQUARE
REDEVELOPMENT CORPORATION

By 
President

Second Amended and Restated
Contract Between the City of Boston
and
Post Office Square Redevelopment Corporation
Pursuant to Section 6A of Chapter 121A
of the Massachusetts General Laws

This Second Amended and Restated Agreement made as of the 23rd day of July, 2010, under Sections 6A, 10 and 15 of Chapter 121A of the General Laws of the Commonwealth of Massachusetts is by and between Post Office Square Redevelopment Corporation, a corporation formed under the laws of the Commonwealth of Massachusetts, (hereinafter called the "Corporation") and the City of Boston, a municipal corporation of the Commonwealth of Massachusetts (hereinafter called the "City").

WITNESSETH THAT:

WHEREAS, Friends of Post Office Square, Inc. caused to be filed with the Boston Redevelopment Authority (the "Authority") an application, dated November 14, 1984 (such application, as amended as described below, is hereinafter called the "Application") under the provisions of said Chapter 121A of the General Laws and of Chapter 652 of the Acts of 1960, as amended (collectively, "Chapter 121A"), for consent to form the Corporation and for approval of a project (the "Project"), more particularly described in the Application, consisting of the construction of an underground parking garage and grade level urban open space (the "Redevelopment Improvements") in the Project Area (as defined in the Application); and

WHEREAS, the Authority approved the Project and consented to the formation of the Corporation by vote as described in its report and decision on the Application dated May 10, 1984 (such report and decision, as amended as described below, is hereinafter called the "Report and Decision") ; and

WHEREAS, the Mayor of the City approved the Authority's approval on October 4, 1984; and

WHEREAS, the vote of the Authority and the approval of the Mayor of the City were filed with the office of the City Clerk on January 17, 1986 and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Corporation was formed by filing its Articles of Organization and a certificate of the Authority evidencing such approval and consent in the Office of the Secretary of the Commonwealth of Massachusetts on January 23, 1986, in accordance with the provisions of Chapter 121A; and

WHEREAS, the Authority approved a First Amendment to the Application dated December 23, 1985, by vote on April 3, 1986, a Second Amendment to the Application dated October 17, 1986, by vote on October 22, 1986, a Third Amendment to the Application dated May 20, 1988, by vote on June 9, 1988, a Fourth Amendment to the Application dated August 15, 1990, by a vote on August 29, 1990, a Fifth Amendment to the Application dated as of July 1, 2010, by a vote on July 20, 2010, and issued such approvals by amending the Report and

Decision through a First Amendment to the Report and Decision dated April 3, 1986, a Second Amendment to the Report and Decision dated October 22, 1986, a Third Amendment to the Report and Decision dated June 9, 1988, a Fourth Amendment to the Report and Decision dated August 29, 1990, a Fifth Amendment to the Report and Decision dated June 28, 1998, and a Sixth Amendment to the Report and Decision dated July 20, 2010; and

WHEREAS, the Mayor of the City approved the Authority's approval of the First Amendment to the Report and Decision on June 5, 1986, the Authority's approval of the Second Amendment to the Report and Decision on November 7, 1986, the Authority's approval of the Third Amendment to the Report and Decision on June 28, 1988, the Fourth Amendment to the Report and Decision on August 29, 1990, the Fifth Amendment to the Report and Decision on June 26, 1998, and the Sixth Amendment to the Report and Decision on July 21, 2010. The vote of the Authority and the approval of the Mayor with respect to the First, Second, Third, Fourth and Fifth Amendments to the Report and Decision were filed with the office of the City Clerk on June 6, 1986, November 7, 1986, June 28, 1988, August 30, 1990, June 26, 1998, and July 23, 2010 respectively; and

WHEREAS, the City and the Corporation entered into a Contract pursuant to G.L. c. 121A § 6A, dated January 29, 1986, with respect to the Project, which agreement was amended and restated by the First Amended and Restated Contract Between the City of Boston and the Corporation Pursuant to Section 6A of Chapter 121A of the Massachusetts General Laws on June 30th, 1988 to reflect changes required by the Third Amendment to the Application, which agreement is to be further amended and restated hereby to reflect changes required by the Fifth Amendment to the Application.

NOW, THEREFORE:

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

(a) To carry out the Project and cause the Project to be constructed, maintained and managed in accordance with the Application, the provisions of Chapter 121A of the General laws as now in effect, and of Chapter 652 of the Acts of 1960 as now in effect, the Minimum Standards for the Financing Construction, Maintenance and Management of the Project (the "Standards") set forth in the Report and Decision, the Development Agreement entered into by and among the Corporation, the City and the Authority (the "Development Agreement"), and any other agreement with the City and Authority, or either, relating to the Project, all of which are incorporated herein by reference.

(b) To pay to the Commonwealth of Massachusetts for each calendar year during which the Project is subject to Chapter 121A, the urban development excise required under Section 10 of 121A (the "Section 10 Payment").

(c) To pay to The Fund for Parks and Recreation in Boston created by instrument dated February 25, 1983 (the "Park Trust") beginning in calendar year 2010 and for so long as the Project is subject to Chapter 121A, an annual payment in the amount of \$100,000 (the "Parks Payment"), such payment to be made in semi-annual installments of \$50,000 each on the first day of May and November of each year (the payment due in May 2010 will be paid

within ten days after the effective date hereof). The obligation of the Corporation to make the Parks Payment shall be subordinate to the payment of required operating expenses and any required annual debt service payments on the Corporation's "Mortgage Indebtedness," which term shall include the current first mortgage and any additional indebtedness secured by a mortgage on the Corporation's interest in the Property.

(d) To pay to the collector of the City for deposit in the general fund of the City for each calendar year beginning in 2010 and continuing for so long as the Project is subject to Chapter 121A, an annual payment (the "City Dividend Payment") in an amount equal to twenty percent (20%) of the amount paid by the Corporation as dividends on its Class A Preferred Stock during such calendar year. The City Dividend Payment will apply to all dividends (whether characterized as current dividends or accrued dividends from prior periods) paid from Project revenues, but shall not apply to dividends paid in connection with a stock repurchase by the Corporation which has been approved by the Director of the Authority and the Commissioner of Assessing. The City Dividend Payment will be paid annually by March 1 following the applicable calendar year.

(e) Subject to the provisions and limitations of this Agreement, to pay with respect of each of the calendar years during which the Project is subject to Chapter 121A and during which the Corporation or its lessee operates the garage portion of the Project, the Net Proceeds of the Project computed as hereinafter set forth (the "Net Proceeds") for the year preceding the year in which such payment is due. Net Proceeds shall be defined as:

(i) the gross income of the Corporation, which for purposes of this Agreement and Section 10 of Chapter 121A shall be all income of the Corporation actually received in any calendar year (which shall not include the proceeds of any refinancing); less

(ii) (a) the cost of maintenance of the open space portion of the Project; (b) the cost of maintenance of Angell Memorial Plaza pursuant to an Operating and Maintenance Agreement between the Corporation and the Boston Parks Department; (c) the cost of debt service (including payments of principal, interest, costs or other charges, and payments to reserves for any of the same, and, in the event of a foreclosure, deed in lieu of foreclosure, or any other action taken by a mortgagee of the Project on account of the Corporation's failure to pay its debts when due, to repay amounts equal to any costs incurred in connection with such action and funds invested by such mortgagee or its successor as equity, and a commercially reasonable return on such investment, taking into account such foreclosure or other action and the facts existing at the time of such investment) attributable to debt financing for the Project entered into by the Corporation pursuant to a financing plan approved by the Authority; (d) the Parks Payment defined in Section 1(c) above; (e) the City Dividend Payment defined in Section 1(d) above; (f) dividends payable in connection with preferred stock issued by the Corporation pursuant to any financing plan approved by the Authority, and payments to reserves for the accrual of dividends or redemption of such preferred stock; (g) all operating expenses for the Project, including repairs, capital improvements, and payments to reserves for repairs or capital improvements as may be required by any first mortgage lender or approved by the Authority and the Commissioner of Assessing in any financing plan or otherwise; (h) in the year in which the garage reverts to the City, payments to redeem in whole or in part the common stock of the Corporation, at a price not to exceed the price paid for such stock; and (i) all taxes or other costs

levied by any state, local or federal governmental authority (including obligations pursuant to G.L. c. 121A, §10) and payable by the Corporation with respect to such year or payable with respect to a prior year and paid in such year (provided that such amounts have not previously been applied to reduce Net Proceeds). The Corporation agrees that it will make all reasonable efforts to notify the City of the amount of all such taxes and other costs and to minimize the amount of such payments, which efforts will include contesting the amount of such payments, if appropriate.

(f) To cause to be filed with the Assessing Department of the City of Boston (the "Assessing Department") within ninety (90) days of the end of each calendar year during which this agreement is in effect a statement of the income and expenses of the Project, and the amount invested in the construction of the Project.

(g) To file with the Assessing Department within ninety (90) days of the end of each calendar year during which this Agreement is in effect an audited report with respect to the Corporation, prepared by an independent Certified Public Accountant, consisting of a statement of profit and loss, a balance sheet, a statement of receipts and disbursements for the preceding calendar year, and a certified copy of the Corporation's urban redevelopment excise tax return as submitted to the Department of Revenue. At the request of the Assessors, the Corporation shall deliver to the Assessors such additional information concerning the operation of the Project and the finances of the Corporation as the Assessors may from time to time require.

(h) To submit to the Commissioner of Assessing or a designated representative written authorization to examine all urban redevelopment excise tax returns and attachments thereto filed by the Corporation with the Department of Revenue.

2. Any amount payable under Paragraph 1(e) hereof shall be paid in accordance with the following schedule:

(a) To the extent that such payment in any calendar year is equal to or less than Three Hundred Thousand Dollars (\$300,000.00), twenty percent (20%) of such payment shall be paid to the collector of the City for deposit in the general fund of the City, and eighty percent (80%) of such payment shall be paid as a gift or grant to the Park Trust.

(b) To the extent that such payment in any calendar year exceeds Three Hundred Thousand Dollars (\$300,000.00), eighty percent (80%) of such excess shall be paid to the collector of the City for deposit in the general fund of the City, and twenty percent (20%) of such excess shall be paid to the Park Trust.

(c) In the event that the Park Trust is terminated, or if under applicable law payment hereunder cannot be made to it, payments required to be made to the Park Trust under this Agreement shall be made in accordance with an amendment to this Agreement or, during any period in which there is not such amendment providing for the disposition of such funds, to the collector of the City.

3. Except as otherwise herein provided, any payment which may become due to the City with respect to any calendar year pursuant to the provisions of this Agreement shall be paid

in or within thirty days from the date of filing of the Corporation's urban redevelopment excise return with the Commonwealth of Massachusetts with respect to such calendar year.

4. The obligations of the Corporation under this Agreement and the Application are conditioned in all respects upon the receipt of all necessary approvals under Chapter 121A and acquisition by the Corporation of the real property on which the Project is to be constructed.

5. The Authority has extended the fifteen-year period of exemption from taxation for the Project to forty years under the provisions of Chapter 121A, Section 10, which period of tax exemption will run from July 23, 2010 (the date of filing of the Report and Decision on the Fifth Amendment to the Application).

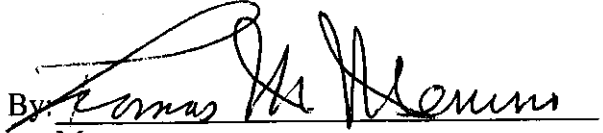
6. The Corporation and the City agree with each other that, without mutual consent, any amendment subsequent to the delivery of this contract of any of the provisions of Chapter 121A of the General Laws or of Chapter 652 of the Acts of 1960 or of the Rules and Regulations or Standards now applicable to the Project shall not affect this Agreement.


7. Subject to the provisions of Chapter 121A, the provisions of this Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns.

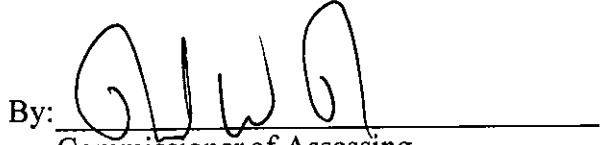
Executed as a sealed instrument as of the day and year first above written.

CITY OF BOSTON

Approved as to form:

By: 
Mayor

By:  (anc)
City of Boston, Corporation Counsel

By: 
Commissioner of Assessing

POST OFFICE SQUARE
REDEVELOPMENT CORPORATION

By: 
President