

B'nai B'rith Senior Citizens Housing Corporation

Contract Required by Section 6A
of Chapter 121A of the General Laws

AGREEMENT made this 30th day of April, 1981 by and between B'nai B'rith Senior Citizens Housing Corporation, a Massachusetts non-profit corporation (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 October 23, 1979 (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 the construction of 150 units of housing for the elderly and handicapped, and appurtenant facilities (the "Project"); and

WHEREAS, the Authority approved the Project by a vote on May 22, 1980; and

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 constructing, maintaining, and managing the same in accordance with the Application, the provisions of Massachusetts General Laws, Chapter 121A, 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 Item 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 the period from initial loan closing on the Project until Completion of the Project, as hereinafter defined, occurs payments in-lieu-of taxes will be the amount by which \$30,000 per year exceeds the minimum excise tax formula as specified in the 121A statute.

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 whichever shall first occur.

- (ii) For the portion of the calendar following completion of the Project, as hereinbefore defined, and for the next two (2) calendar years, the project will pay twelve (12%) percent of the gross residential income from the Project, as hereinafter defined.
- (iii) Commencing in the third calendar year following completion of the Project, the percentage of gross residential income payable to the City shall be increased to thirteen (13%) percent and in every third year thereafter, the percentage of gross residential income by the Owner shall be increased, based on a substantial general increase in the Real Estate taxes in the City of Boston as determined by the Commissioner of Assessing, by one (1%) percent until the Project is paying a maximum of fifteen (15%) percent of gross residential income.
- (iv) Owner's obligation to make payment of any increased percentage above twelve (12%) percent shall be conditional upon approval and funding of a special rent adjustment by the United States Department of Housing and Urban Development (HUD) governing the Section 8 rental assistance program, or any successor subsidy program thereto, which approval Owner hereby undertakes to secure.

- (v) Notwithstanding the above, subsequent to the calendar year in which the Owner shall have paid to the City twelve (12%) percent of residential income from the project if HUD shall not have approved and funded any percentage increase of residential income payable by Owner in excess of twelve (12%) percent, Owner shall nevertheless pay to the City so much of such increased percentage of residential income as set forth above as the Project can sustain without suffering an operating loss. For purpose 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 the 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.

The phrase "gross 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 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 (subsidy income).

Without limiting the foregoing, it is the intent of the parties hereto that the Owner shall for any calendar year discharge their contractual obligation pursuant to this contract prior to the distribution to the Owner of any return on its investment in the Project.

Any payments which may become due to the City of Boston on account of the provisions of this Section (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 payments is made. Any overpayment of any amount hereunder or pursuant to Chapter 121A, Section 10 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 which the Project shall qualify for 121A, 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, 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 Owners income from or investment in the Project additional to the excise provided for by Section 10 of said Chapter 121A as now in effect, the 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 Commissioner of Assessing, the Boston Redevelopment Authority and the Collector-Treasurer's Office 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 construction of the Project.
 - (f) To file with the Authority, the Collector-Treasurer's Office and the City Assessor 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 Account, consisting of a statement of all rental and other income, operating costs, construction and replacement costs, a statement of profit and loss for the 121A Corporation, a balance sheet, and a statement of disposition of funds 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.
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 at the reasonable expense of the Owner.

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 interests 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.

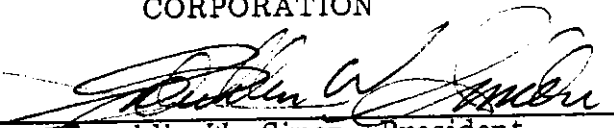
3. The Assessors agree at all times to cause information required to be submitted to the State Tax Commission under said Chapter 121A to conform to the provisions of this Agreement.
4. The obligations of the Owner under this contract are conditions in all respects upon the issuance to them of all permissions, including without limiting the generality of the foregoing: all variances, deviations, 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 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.
6. If the Owner 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, 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 under 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 would be coterminous with the U.S. Department of Housing and Urban Development's Subsidy Program. In the event that the Project ceases to be a totally subsidized program, 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 Officer or Director of the Owner shall have any personal liability for the performance of the obligations of this corporation hereunder.

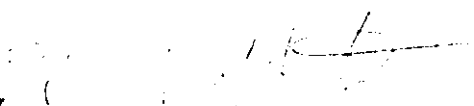
Executed as a sealed instrument the day and year first above written.


B'NAI B'RITH SENIOR CITIZENS HOUSING CORPORATION

By 
Franklin W. Simon, President


ASSENTED TO:

CITY OF BOSTON

By 
Commissioner of Assessing

By 
Kevin H. White, Mayor

APPROVED AS TO FORM:

By 
Corporation Counsel

B'NAI B'RITH SENIOR CITIZENS HOUSING CORPORATION

AMENDMENT TO 6A CONTRACT
Pursuant to Massachusetts General Laws
Chapter 121A, Section 6A

RECEIVED
CITY CLERK'S OFFICE
91 DEC -2 PM 3:24
BOSTON, MA

This Amendment to 6A Contract (the "Amendment") is entered into as September 30, 1991, by and between B'NAI B'RITH SENIOR CITIZENS HOUSING CORPORATION, a Massachusetts non-profit, charitable corporation with a principal place of business at 30 Washington Street, Boston, MA 02135 (the "Owner") and the CITY OF BOSTON, a municipal corporation of the Commonwealth of Massachusetts, acting by and through its Mayor pursuant to Chapter 121A, Section 6A, as amended of the Massachusetts General Laws (the "City"). Collectively, the Owner and City are hereinafter referred to as the "Parties".

PRELIMINARY STATEMENT

On May 22, 1980, the Boston Redevelopment Authority (the "Authority") voted to adopt a Report and Decision (the "Report and Decision") on a project known as B'nai B'rith Senior Citizens Housing Corporation (the "Project"). Such vote was approved by the Mayor of the City of Boston (the "Mayor") on June 3, 1980 and the vote as approved was filed with the Clerk of the City (the "City Clerk") on June 4, 1980. The Project, as more particularly described in the Report and Decision, consisted of the construction, operation and management of a 9-story structure containing 150 units of rental housing for the elderly financed under the federal Department of Housing & Urban Development ("HUD") Section 202 Program ("HUD 202 Program") with a related surface parking lot for 40 vehicles.

On October 14, 1980, a certain Regulatory Agreement under Chapter 121A, Section 18C, was executed by and between the Owner and the designated 121A entity in the Report and Decision, and the Authority (the "Regulatory Agreement").

On April 30, 1981, a certain agreement under Chapter 121A, Section 6A, was executed by and between the Owner and the City of Boston (the "6A Contract"). The 6A Contract is incorporated by reference as if fully set forth herein.

On April 11, 1990, the Owner filed with the Authority a certain application, dated March 29, 1990, to amend for the first time the Report and Decision. Approval was requested for changes to the Project's existing structure and related land, including specifically the construction of an additional 50 rental housing units under the HUD 202 Program within the existing Project Area, as described in the Report and Decision. The boundaries of the Project Area would not be altered, but a 9-story extension of the existing structure would be constructed over an existing surface parking lot to accommodate the 50 additional units. The total number of elderly units would be increased from 150 to 200 and the on-site parking would be increased from 40 to 53. On June 29, 1990, the Owner submitted a further amendment to its initial application along with certain plans. The "Application for the First Amendment" consisted of the March 29 and June 29, 1990 submissions along with the referenced plans.

On August 15, 1990, a public hearing was held by the Authority to consider the Application for the First Amendment to the Report and Decision. The public hearing was required because the proposed Project changes constituted in their entirety a "fundamental change" under Chapter 652, Section 13A, as amended.

On October 25, 1990, the Authority adopted by vote a certain document entitled in part, "First Amendment to the Report and Decision". Such vote was approved by the Mayor on November 20, 1990 and the vote as approved was filed with the City Clerk on November 27, 1990 (the "First Amendment"). The First Amendment is incorporated by reference as if fully set forth herein.

The First Amendment, Section 6, entitled "Rules and Regulations", required the Owner to enter into an Amendment to the 6A Contract with the City of Boston. This Amendment is the Amendment to the 6A Contract as so required.

1. Description of Project. In accordance with the First Amendment to the Report and Decision and for the 6A Contract as herein amended, the term "Project" shall now include the construction on the existing surface parking lot within the "Project Area" of a new 9-story extension to the existing 9-story structure which will contain approximately 50 units of leased housing for the elderly with approximately 38 one-bedroom and 12 efficiency units. On the ground level of the new 9-story extension, there will be 20 enclosed parking spaces with 23 spaces on the reconfigured surface parking area to meet the needs

of the expanded facility.

2. Calculation of Annual 6A Payment. The provisions of Section 1 of the 6A Contract, specifically Subsections 1(d) through (f), in its or their entirety and without modification to any extent, shall apply to the "Project", including the expansion authorized by the First Amendment to the Report and Decision.

3. Regulatory Agreement Amendment. Any reference in the 6A Contract to the "Regulatory Agreement" shall include the Amendment to Regulatory Agreement between the Owner and the Authority of even date herewith.

4. Amendment Limitation. All other terms and conditions of the 6A Contract not revised or amended by this Amendment shall remain in full force and effect. If there should be any conflict or inconsistency between the provisions of the 6A Contract and this Amendment, the provisions of this Amendment shall apply and govern.

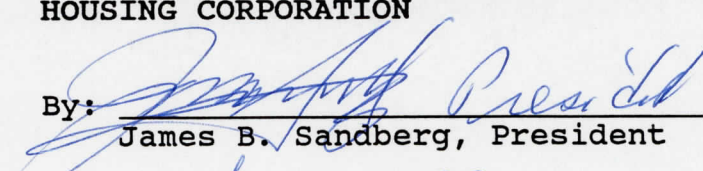
5. Titles to Sections. The titles of the several Sections of this Amendment are inserted for convenience of reference only and shall be disregarded in construction or interpretation of any of the provisions of this Amendment.

6. Severability. If any term or provision of this Amendment, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable,

the remainder of this Amendment, or the application of such terms to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Amendment shall be valid and enforceable to the extent permitted by law.

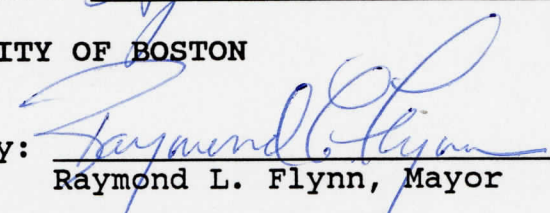
EXECUTED as a sealed instrument as of the date first above written.

**B'NAI B'RITH SENIOR CITIZENS
HOUSING CORPORATION**

By: 
James B. Sandberg, President

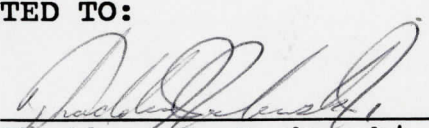
DATE: Sept 30, 1991

CITY OF BOSTON

By: 
Raymond L. Flynn, Mayor

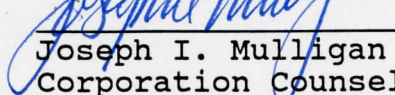
DATE: November 26, 1991

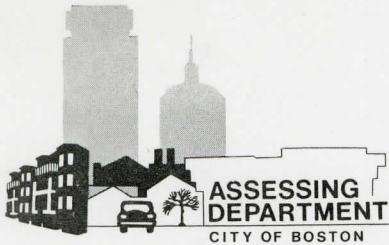
ASSENTED TO:

By: 
Thaddeus J. Jankowski, Jr.
Commissioner of Assessing
City of Boston

DATE: November 26, 1991

APPROVED AS TO FORM:

By: 
Joseph I. Mulligan
Corporation Counsel
City of Boston



M E M O R A N D U M

TO: City Clerk

FROM: Thaddeus J. Jankowski, Jr.
Commissioner of Assessing

DATE: November 29, 1991

RE: B'Nai B'Rith Senior Citizens Housing Corporation
Amendment to Contract pursuant to M.G.L. c.121A, §6A

Attached please find an executed copy of the above referenced contract for filing in the City Clerk's Office. Thank you for your assistance.

8167x

B'NAI B'RITH SENIOR CITIZENS HOUSING CORPORATION

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Pursuant to Massachusetts General Laws
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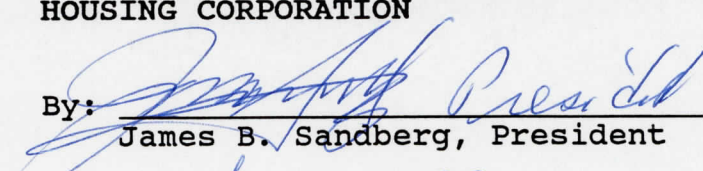
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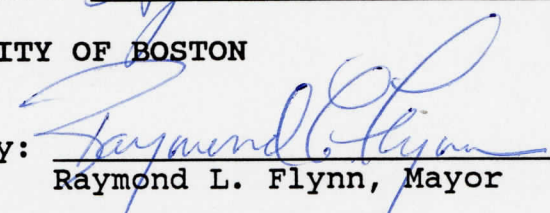
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HOUSING CORPORATION**

By: 
James B. Sandberg, President

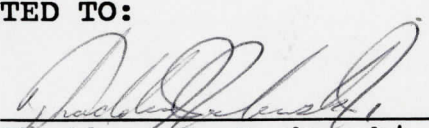
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CITY OF BOSTON

By: 
Raymond L. Flynn, Mayor

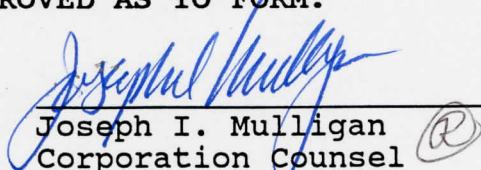
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