

Bradford Towers Associates
Contract Required by Section 6A
Of Chapter 121A of the General Laws

AGREEMENT made this 4th day of May, 1981, by and between Bradford Towers Associates, a Limited Partnership organized pursuant to Massachusetts General Laws, Chapter 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 June 9, 1980 (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 acquisition of the Project Area from the Authority, and the construction, operation, and maintenance of two buildings containing 231 units of housing for low-income elderly and handicapped persons (the "Project"); and

WHEREAS, the Authority approved the Project by a vote on September 4, 1980; and

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on November 12, 1980; 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 November 13, 1980.

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, the Rules and Regulations 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 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, payments in-lieu-of taxes will be the amount by which \$1,111 per month exceeds the minimum excise tax formula as specified in the 121A statute. In addition to such payment the Applicants shall pay 10% of gross residential income (including subsidy) from the Project until completion of the Project.

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) For the portion of the calendar year next 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) The 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 the 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 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 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 "residential income from the Project" shall be deemed to mean the aggregate of the gross 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).

- (vi) In addition to the tax payment schedule above in the residential component of the project the Owner will make payments in-lieu-of taxes on gross residential income received from all retail/commercial space leased on the property based on the following schedule:

Commencing in the first calendar year after completion, and for the next two years, twenty-three (23%) percent of gross rental income from all retail/commercial space leased on the property.

Every third year, thereafter, the rate will increase by three (3%) percent, until the maximum rate of thirty (30%) percent of gross rental income is obtained for retail/commercial space;

(i.e., rate will increase to twenty-six (26%) percent in fourth (4th) year after completion, twenty-nine (29%) percent in the seventh (7th) year and thirty (30%) percent in the tenth (10th) year and each year thereafter until the end of the agreement.)

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 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 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 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 Commissioner of Assessing, Collector-Treasurer's Office and the Authority 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 Authority, the Collector-Treasurer's Office and the Commissioner of Assessing 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 all rental and other income, operating cost, construction and replacement cost, 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 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.

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

DELETED

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 Massachusetts General Laws, 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 or any similar or successor 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 General or Limited Partner of Bradford Towers Associates shall have any personal liability for the performance of the obligations of this corporation hereunder.

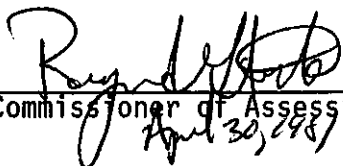
Executed as a sealed instrument the day and year first above written.

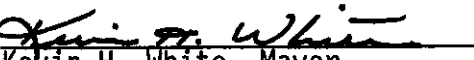
BRADFORD TOWERS ASSOCIATES

By 
General Partner

ASSENTED TO:

CITY OF BOSTON

By 
Commissioner of Assessing
April 30, 1987

By 
Kevin H. White, Mayor

APPROVED AS TO FORM:

By 
Corporation Counsel

AMENDMENT TO SECTION 6A CONTRACT

This amendment (the "Amendment") of a Section 6A Contract is entered this 6th day of June, 2003, by and between Cove Plaza Associates Limited Partnership, a Massachusetts limited partnership (the "Owner"), as successor in interest to Bradford Tower Associates, a Massachusetts limited partnership (the "Predecessor 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.

WITNESSETH:

WHEREAS, Predecessor Owner and the City entered into that certain contract on May 4, 1981 (the "Contract") pursuant to Section 6A of Chapter 121A of the Massachusetts General Laws ("Section 6A"), under which Predecessor Owner agreed to construct and maintain a residential project in the City of Boston containing two buildings with a total of 229 units of elderly and low-income housing (the "Project") on the property (the "Property") described on Exhibit A attached hereto, and to make certain payments in-lieu-of-taxes to the City; and

WHEREAS, Predecessor Owner previously completed the Project pursuant to the terms and conditions of the Contract and has otherwise complied with the terms of the Contract since its execution; and

WHEREAS, Owner has succeeded to the interest of Predecessor Owner in the Project; and

WHEREAS, Owner and the City desire to make certain revisions to the Contract;

NOW, THEREFORE, in consideration of the mutual promises contained in the Contract and this Amendment, and such other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and the City hereby agree as follows:

1. Payments in-Lieu-of-Taxes. Notwithstanding any provision to the contrary in the Contract, including but not limited to Section 1(d) therein, the amounts to be paid by Owner to the City as payments in-lieu-of taxes for the remainder of the term of the Contract shall be pursuant to the following schedule (the "Contract Amount"):

(a) With respect to the first two calendar years following the date of this Amendment, the percentage of gross residential income generated by the Project payable to the City by Owner shall be nine percent (9%).

(b) With respect to the third calendar year following the date of this Amendment, the percentage of gross residential income generated by the Project payable to the City by Owner shall be ten percent (10%).

(c) With respect to the fourth calendar year following the date of this Amendment, the percentage of gross residential income generated by the Project payable to the City by Owner shall be eleven percent (11%).

(d) With respect to the period beginning on the first day of the fifth calendar year after the date of this Amendment until expiration or earlier termination of the Contract, the percentage of gross residential income generated by the Project payable to the City by Owner shall be twelve percent (12%).

(e) With respect to the period from the date of this Amendment until expiration or earlier termination of the Contract, the percentage of gross income generated from all retail/commercial space leased in the Project to be paid by Owner to the City shall be twenty percent (20%).

2. Effective Date of Amendment. This Amendment shall take effect on the date first written above.

3. Gap Payment. This Amendment shall continue for a term commencing on the Effective Date of Amendment and terminating on the date on which the property tax exemption provided to the Owner under the Chapter 121A terminates. Notwithstanding the foregoing, upon the termination of the Contract and this Amendment (collectively, this "Amendment"), the Owner shall pay or cause to be paid a pro-forma tax to cover the time period between such termination of this Amendment and the period for which the Project becomes taxable pursuant to Chapter 59, which pro-forma shall be equal to the Contract Amount for such period as if the Project had remained subject to this Amendment. Such amount for the balance of the calendar year during which this Amendment terminates shall be payable on or before March 15 of the year following the year in which this Amendment terminates. Neither the Project or the Ownership shall thereafter be subject to the obligations of Chapter 121A, enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations of this Amendment as provided in Chapter 121A, provided however, the deviations and permissions granted by the BRA pursuant to the Report and Decision, as amended, shall survive and remain in effect.

4. Authority. Owner and the City hereby represent and warrant that each is duly authorized to enter into and consummate the transactions contemplated by this Amendment and that the officer or representative executing this Amendment on behalf of each of Owner and the City is duly authorized to enter into this Amendment on behalf of Owner and the City, respectively.

5. Binding Effect; Governing Law. Except as modified hereby, the Contract shall remain in full effect and this Amendment shall be binding upon Owner and the City, and their respective successors and assigns. If any inconsistency exists or arises between the terms of this Amendment and the terms of the Contract, the terms of this Amendment shall prevail. This Amendment shall be governed by the laws of the Commonwealth of Massachusetts.

6. Notices. All notices required pursuant to this Amendment shall be in writing and delivered by hand or mailed postage prepaid, by registered or certified mail, addressed in the

case of the City to City of Boston Assessing Department, One City Hall Plaza, 3rd Floor, Boston, MA 02201, Attention Commissioner, with a separate copy to City of Boston Assessing Department, One City Hall Plaza, 3rd Floor, Boston, MA 02201, Attention: Special Assistant Corporation Counsel, and in the case of the Owner, to Cove Plaza Associates Limited Partnership, c/o Weston Associates, Inc., 170 Newbury Street, Boston, MA 02116, Attention: Mark Donahue, with a separate copy to Choate, Hall & Stuart, Exchange Place 53 State Street, Boston, MA 02109, Attention: Lois C. Miller, P.C., and in the case of either party to such other address as shall be designated by written notice given to the other party.

7. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

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IN WITNESS WHEREOF, Owner and the City have executed this Amendment as of the date first above written to take effect as a Massachusetts instrument under seal.

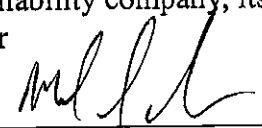
WITNESS:

OWNER:

COVE PLAZA ASSOCIATES LIMITED
PARTNERSHIP, a Massachusetts limited
partnership

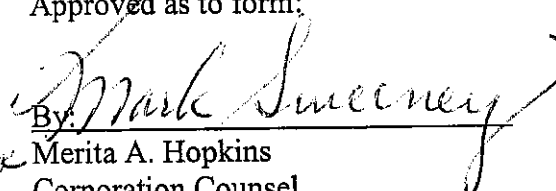
By: Cove Plaza Weston LLC, a Massachusetts
limited liability company, its General
Partner

By: TS Associates LLC, a Massachusetts
limited liability company, its
manager

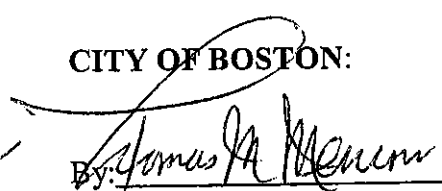
By: 
Name: Mark J. Donahue
Title: Manager

Name:

Approved as to form:

for By: 
Merita A. Hopkins
Corporation Counsel
City of Boston

CITY OF BOSTON:

By: 
Thomas M. Menino
Mayor

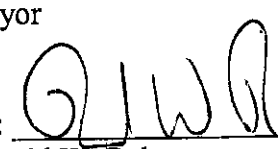
By: 
Ronald W. Rakow
Commissioner
Assessing Department

Exhibit A

Property Description