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

AGREEMENT made this 21st day of December, 1983,
by and between KENMORE ABBEY COMPANY, a Massachusetts Limited
Partnership (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 Massa-
chusetts (the "Authority") an application dated August 9, 1982
(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 Author-
ity of a project involving the construction of 199 units of
housing for the elderly and handicapped, the appurtenant facil-
ities (the "Project"); and

WHEREAS, the Authority approved the Project by a vote on
September 16, 1982; and

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on September 17, 1982; 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 September 20, 1982.

NOW, THEREFORE:

1. The Owner hereby agrees with the City as follows:
 - (a) To carry out the Project by constructing, rehabilitating, 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 Projects, 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 the 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) For the period from initial loan closing on the Project, as hereinafter defined, through December 31, 1982, payments under this Agreement will be the amount by which \$1,658 exceeds the minimum excise tax per year as specified in the 121A statute (i.e., of 5% of gross rental income plus \$10 per \$1,000 of Fair Cash Value of the property); for the calendar year 1983, the amount by which \$19,900 plus 10% of the gross residential income from the Project exceeds said sum; and for each year thereafter, prior to completion, the amount by which \$19,900 pro-rated in the year of completion for the period prior to completion at the rate of \$1,658 per month plus 10% of the gross residential income from the Project exceeds said sum. For the 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 or MHFA and/or occupancy of 90% of the dwelling units whichever shall first occur.
- (ii) For the portion of the calendar year following completion of the Project, and in the first two (2) calendar

years following the completion of the Project, 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 payable by the Owner shall be increased based on a substantial general increase in the real estate taxes in the City of Boston 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 seek.
- (v) Notwithstanding the above, subsequent to the third calendar year in which the Owner shall have paid to the City twelve percent (12%) of gross residential income from the Project if HUD shall not have approved and funded any percentage increase of gross 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 gross 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 in operating loss, and the amount thereof, shall be determined by the certified operating statement submitted by the Owner to MHFA 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 MHFA.

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), provided, however, that "gross residential income from the Project" shall not include any income or monies received by the Owner pursuant to or derived from a Financial Adjustment Factor provided by HUD or MHFA or any income from said Financial Adjustment Factor which is characterized as "rent" or "rental income".

Subject to HUD approval, if required, in the event, from time to time, and as long as, any residential units are leased to tenants whose incomes do not permit them to qualify for Section 8 rental assistance (Market Tenants) and in fact the Owner does not receive such assistance during such tenant's occupancy, Owner shall, with respect to such units and with respect to the period of time they are occupied by Market Tenants, in lieu of the payments described above, pay to the City of Boston a sum equal to (a) with respect to the first calendar year, after completion of the Project as hereinbefore defined occurs, twelve per cent (12%) of the residential income paid by Market Tenants, (b) with respect to the second calendar year after completion, seventeen per cent (17%) of such income; and (c) with respect to the third calendar year after completion, twenty-three per cent (23%) of such income. Commencing in the sixth (6th) calendar year after completion of the Project, and each year thereafter, and subject to HUD approval, if required, taxes will increase in proportion to the increases in the City's tax levy from said sixth year on similar types of residential property (adjusted to reflect the new tax rate structure under 100% valuation).

The percentages paid to the City with respect to units occupied by Market Tenants shall be the percentages referred to above based on the aggregate of the gross basic rentals received by the Owner from whatever source derived from Market Tenants all inclusive.

(vi) With respect to gross commercial income from the Project, as hereinafter defined, the Owner shall pay the follow-

ing amounts to the City for each calendar year this Contract is in effect: (1) commencing in the first calendar year after Completion of the Project, and for each of the two succeeding years, twenty-three percent (23%) of gross rental income from all retail/commercial space leased in the Project; (2) during each of the fourth through sixth years after Completion of the Project, twenty-six percent (26%) of such income; (3) during each of the seventh through ninth years after Completion of the Project, twenty-nine percent (29%) of such income; and (4) during the tenth and each year thereafter until the end of the Agreement, thirty percent (30%) of such income.

In no event, however, shall the Owner be required to pay 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.

The phrase "gross commercial income from the Project" shall be deemed to mean all income received by the Owner from occupants of commercial space in the Project from whatever source derived. If the commercial space in the Project is occupied by the Owner, or a subsidiary, an imputed "fair market rental value" as determined by MHFA, ^{and approved by the Commissioner of Assessing} will be attributed to the space occupied by the Owner, or subsidiary, and will be calculated as gross commercial income for

purposes of payments under this Contract. Notwithstanding the preceding two sentences, rent paid for any space leased but not occupied by Owner or any corporation in which the general partners of Owner are stockholders or any other affiliate of Owner, shall not be included in gross commercial income from the Project, provided that all income received by Owner or by such corporation or affiliate from any sublease or other occupancy shall be included in such term. Without limiting the foregoing, it is the intent of the parties hereto that the Owner shall for any calendar year discharge its 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 payments are 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 is subject to the provisions of Chapter 121A such overpayment 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, the applicable amount stated in or computed in accordance with the preceding paragraphs of this Contract will 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 and the Collector-Treasurer's Office of the City Assessor within ninety (90) days of the end of each calendar year during which this Contract is in effect an audit 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 entity, a balance sheet, and a statement of disposition of funds for the preceding calendar

year, and a certified copy of the Owner's urban re-development excise tax return as submitted to the Department of Corporations and Taxation.

2. Furthermore, the City and/or the Authority can make annual audit of all financial reports pertaining to the operations of the Project under its 121A status and can engage the services of a private accounting firm to undertake such an audit at the expense of 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 undersigned, Assessing Department of the City of Boston, pursuant to the authority conferred upon it by Section 10 of Chapter 121A of the General Laws, hereby determines that the following shall be the maximum fair cash value of the Project, and agrees that the values certified to the Department of Revenue and to the Owner pursuant to said Section 10 shall not exceed the maximum fair cash values herein set forth:

 January 1, 1983: \$210,600

January 1, 1984: \$1,000,000

January 1, 1985 - January 1, 1987: \$8,500,000

The parties acknowledge that if the fair cash value of the Project has not yet been so determined, the Assessing Department of the City of Boston shall determine the fair cash value of the Project pursuant to Massachusetts General Laws Chapter 121A, Section 10, without reference to any other 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, 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 of 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, Section 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, such modifications may be made 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 same 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 and 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.

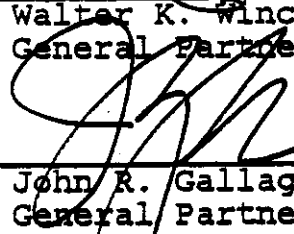
8. The term of this Agreement shall be for a period that would be coterminous with the U.S. Department of Housing and Urban Development's Subsidy Program.

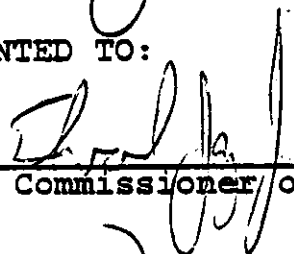
9. No General of Limited Partner of Kenmore Abbey Company shall have any personal liability for the performance of the obligations of Kenmore Abbey Company hereunder.

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

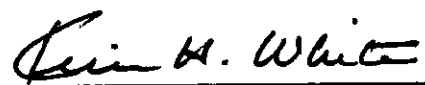
KENMORE ABBEY COMPANY


By 
Walter K. Winchester,
General Partner

By 
John R. Gallagher, III,
General Partner

ASSENTED TO:
By 
Commissioner of Assessing

CITY OF BOSTON

By 
Kevin H. White, Mayor

APPROVED AS TO FORM:
By 
Corporation Counsel

**First Amended and Restated Contract
Between the City of Boston
And
Kenmore Abbey Preservation Associates Limited Partnership
Pursuant to Section 6A of
Chapter 121A of the Massachusetts General Laws**

This First Amended and Restated Agreement made as of this ___ day of _____, 2012, by and between KENMORE ABBEY PRESERVATION ASSOCIATES LIMITED PARTNERSHIP, a Massachusetts limited partnership (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, the Kenmore Abbey Company (the “**Prior Owner**”) filed with the Boston Redevelopment Authority of the Commonwealth of Massachusetts (the “**Authority**”) an application dated August 9, 1982 (the “**Application**”) under the provisions of Massachusetts General Laws, Chapter 121A (“Chapter 121A”), as amended, and Chapter 652 of the Acts of 1960 (“Chapter 652”), 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 “**Original Project**”);

WHEREAS, the Application sought the approval of the Authority of the Original Project involving the construction of 199 units of housing for the elderly and handicapped, the appurtenant facilities; and

WHEREAS, the Authority approved the Original Project by a vote on September 16, 1982; and

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on September 17, 1982; 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 September 20, 1982; and

WHEREAS, the City and the Prior Owner entered into a contract pursuant to Chapter 121A, Section 6A, dated December 21, 1983 (the “**Original 6A Contract**”), with respect to the Original Project; and

WHEREAS, the Prior Owner and the Owner have entered into an agreement, in which the Prior Owner has agreed to convey to the Owner, as part of a portfolio transaction, fee ownership of the Original Project; and

WHEREAS, the Owner has caused to be filed with the Authority a transfer application dated February 9, 2012 (the “**Transfer Application**”) pursuant to the provisions of Chapter

121A, Sections 11 and 18C, as amended, the provisions of the Chapter 652, Section 13A, as amended, and any rules and regulations of the Authority that may be applicable hereto, for the approval and consent of the Authority for: (i) the formation of the Owner as a Chapter 121A redevelopment limited partnership; (ii) the acquisition by the Owner of the Original Project; and (iii) the undertaking by the Owner of certain renovations to the Original Project (the acquisition by the Owner of the Original Project and the renovations thereto are referred herein collectively as the "Project"), which Transfer Application was approved by the Authority on February 17, 2012; and

WHEREAS, the City and the Owner have agreed to amend and restate the Original 6A Contract to reflect the changes required by the Transfer Application.

NOW, THEREFORE:

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

(a) To carry out the Project, located at 545 Newbury Street (also known as 486-490 Commonwealth Avenue) (Parcel ID 05-03924-000) by renovating, maintaining, and managing the same in accordance with the Transfer 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 Projects, 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 the 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 7 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 calendar years 2012, 2013 and 2014, seven percent (7%) of Gross Rental Income, as hereinafter defined.

(ii) With respect to the calendar years 2015, 2016 and 2017, seven and one-half percent (7.5%) of Gross Rental Income, as hereinafter defined.

(iii) With respect to calendar year 2018 and each year thereafter that the Project is subject to the provisions of Chapter 121A and for such portion of the last calendar year that the Project is subject to the provisions of Chapter 121A, eight percent (8%) of Gross Rental Income, as hereinafter defined.

The term "**Gross Rental Income**" 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 ("**HUD**"), pursuant to Section 8 of the Housing Act of 1937, as amended, or any similar successor subsidy program (subsidy income), provided, however, that "Gross Rental Income" shall not include any payments received by the Owner (even though designated as "additional rent") for any services rendered or expenses incurred for which a separate charge is made.

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 payments are 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 is subject to the provisions of Chapter 121A such overpayment 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, the applicable amount stated in or computed in accordance with the preceding paragraphs of this Contract will 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 and the Collector-Treasurer's Office of the City Assessor within ninety (90) days of the end of each calendar year during which this Contract is in effect an audit 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 entity, 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 annual audit of all financial reports pertaining to the operations of the Project under its 121A status and can engage the services of a private accounting firm to undertake such an audit at the expense of 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 obligations of the Owner under this Contract are conditioned in all respects upon the acquisition of the Original Project by Owner, including the closing of the financing for the Project. The Owner shall not be held in any way liable for delays which may occur in the renovation, 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 of any other cause beyond the Owner's reasonable control.

4. 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.

5. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

6. The term of this Agreement shall be for a period that would be coterminous with the U.S. Department of Housing and Urban Development's Subsidy Program, but in no event shall the term extend past September 20, 2022.

7. Upon the termination of this Agreement, the Owner shall pay or cause to be paid a gap payment to cover the time period between such termination of this Agreement and the date the Project becomes taxable pursuant to General Laws, Chapter 59. The gap payment shall be equal to the 6A Contract Payment that would have been made for such period if the Project had remained subject to this Agreement. The anticipated termination date of this Agreement is September 20, 2022, unless it is terminated at an earlier date in accordance with the other terms of this Agreement. The gap payment shall be due on April 1, 2023. The Project thereafter shall not 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 Agreement as provided in Chapter 121A; provided, however, the deviations and permissions granted by the Authority pursuant to the Report and Decision, as the same may be amended from time to time, shall survive such termination and shall remain in effect.

8. No General or Limited Partner of Kenmore Abbey Preservation Associates Limited Partnership shall have any personal liability for the performance of the obligations of Kenmore Abbey Preservation Associates Limited Partnership hereunder.

9. This First Amended and Restated Agreement supersedes that certain Agreement between Kenmore Abbey Company and the City of Boston, dated December 21, 1983.

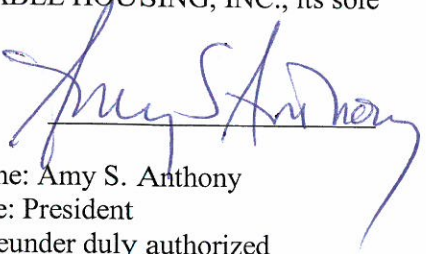
[signature page follows]

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

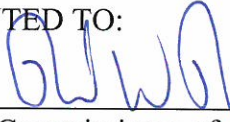
KENMORE ABBEY PRESERVATION
ASSOCIATES LIMITED PARTNERSHIP

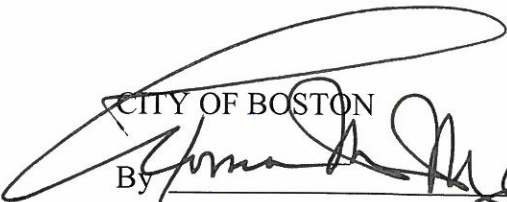

By: POAH KENMORE ABBEY, LLC,
its General Partner

By: PRESERVATION OF
AFFORDABLE HOUSING, INC., its sole
member

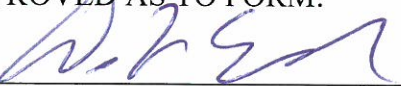
By: 
Name: Amy S. Anthony
Title: President
Hereunder duly authorized

ASSENTED TO:

By 
Commissioner of Assessing


CITY OF BOSTON
By 
Mayor

APPROVED AS TO FORM:

By 
Corporation counsel 