

12/6/82

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

AGREEMENT made this 25th day of JANUARY 1983, by and between Angela Westover Housing Corporation, a Massachusetts non-profit corporation with an address of P.O. Box 4, 62 Atherton Street, Jamaica Plain, Ma. 02130,

(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.

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 March 22, 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 involving the rehabilitation and conversion of the premises at 49 Parley Avenue, Jamaica Plain, Massachusetts into a congregate residence for eleven low and moderate income elderly and/or handicapped residents,

said project being more particularly described in the Application (the "Project"); and

WHEREAS, the Authority approved the Project by a vote on October 14, 1982; and

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on October 25, 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 October 27, 1982 ;

NOW, THEREFORE:

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

a. The Owner shall carry out the Project by rehabilitating, maintaining, and managing the same in accordance with the Application, the provisions of Massachusetts General Laws, Chapter 121A, as now in effect, the Rules and 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. The Owner shall 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. The Owner shall pay to the Commonwealth of Massachusetts with respect to each year that this Agreement is in full force and effect, the urban redevelopment excise tax required under Section 10 of said Chapter 121A.

d. The Owner shall pay to the City of Boston with respect to each of the calendar years this Agreement is in effect as hereinafter defined in Paragraph 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 tax payable for such calendar year pursuant to Section 10 of said Chapter 121A.

(i) With respect to the period from initial loan closing on the Project until completion of the Project, as hereinafter defined, payments under this Agreement shall be the amount by which \$ 122.22 per month exceeds the said excise tax. In addition to such payment, the Owner shall pay to the City ten percent of gross residential income from the Project, as hereinafter defined, with respect to such period.

For purposes of the Agreement, the phrase, "Completion of the Project" means certification of 100% completion from the appropriate funding source, or occupancy of 90% of the dwelling units in the Project, whichever occurs first.

- (ii) For the portion of the calendar year following completion of the Project, and for the next two (2) full calendar years thereafter, the Owner shall pay twelve (12%) percent of the gross residential income from the Project, as hereinafter defined.
- (iii) Commencing in the third calendar year next 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 paid by the Owner shall be increased 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 make its best efforts 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.

(vi) The Project includes no square feet of commercial space.

~~If the Project includes commercial space as indicated in the preceding sentence, the Owner shall in addition make payments to the City, for each of the calendar years this Agreement is in effect, in the amount of thirty (30%) percent of the gross commercial income from the Project, as hereinafter defined.~~

~~The phrase "gross commercial income" shall be deemed to mean all income received by the Owner from occupants of any commercial space in the Project, from whatever source derived. If the commercial space is occupied by the Owner, or a related person or entity, an imputed "fair market rental value" will be attributed to the space so occupied, and will be calculated as gross commercial income for purposes of payment under this Agreement.~~

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 Agreement 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 due. 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 be subject to this Agreement, any overpayment by the Owner shall be refunded by the City. For purposes of this Agreement, 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 for any period during which this Agreement is in effect, whether assessed to Owner or to any predecessor in title of the Project.

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 Agreement shall be reduced by the amount of such additional excise or tax.

e. The Owner shall 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 Agreement is in effect a statement of the income and expenses of the Project and the amounts invested in the Project.

f. The Owner shall 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 Agreement 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 Owner, 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. If the Owner fails to submit the audited report required by Paragraph 1f, or if the City or the Authority have reasonable cause to be dissatisfied with such audited report, the City and/or the Authority may make an annual audit of all financial records pertaining to the operations of the Project and may 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 under the Agreement, the Owner shall 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 shall pay and/or reimburse the City for all expenses incurred as a result of such withholding or misrepresentation.

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: For years 1983, 1984, 1985, 1986 and 1987:

(a) The fair cash value of the Project as of January 1, 1983 shall not exceed \$25,000.

(b) The fair cash value of the Project as of January 1, 1984 shall not exceed \$500,000.

(c) The fair cash value of the Project as of January 1, 1985, 1986 and 1987 shall not exceed \$750,000.

For all other years the following paragraph shall apply:

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 Agreement are conditioned in all respects upon the issuance to it 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, 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, this Agreement may, upon such transfer, be assignable to a transferee or may be terminated, all in accordance with the provisions of said sections, 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 Agreement 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 Agreement 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 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.

8. The term of this Agreement shall be for a period that is coterminous with the U.S. Department of Housing and Urban Development's Section 8 Subsidy Program for the Project or any similar or successor subsidy program. In the event that the Project ceases to be subsidized under the said program, then this Agreement shall be amended to reflect this change.

9. No member, director, officer or agent of the Owner shall have any personal liability for the performance of the obligations of the Owner hereunder.

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

Angela Westover Housing Corporation

By *Robert G. Kelly*
President

ASSENTED TO:

CITY OF BOSTON

By *[Signature]*
Commissioner of Assessing

By *Kevin H. White*
Kevin H. White, Mayor

JAN. 25, 1983

APPROVED AS TO FORM?

By *[Signature]*
Corporation Counsel

Revised: 10/7/82

CONTRACT BETWEEN ANGELA WESTOVER AND THE CITY OF BOSTON
PURSUANT TO GENERAL LAWS, CHAPTER 121A, SECTION 6A

This contract (the "Second 6A Contract") is made as of this _____ day of _____ 2006, under Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of The Commonwealth of Massachusetts, by and between ANGELA WESTOVER HOUSING CORPORATION, a Massachusetts nonprofit corporation (the "Owner"), and THE CITY OF BOSTON, a municipal corporation of The Commonwealth of Massachusetts (the "City").

WITNESSETH:

WHEREAS, the Owner filed with the Boston Redevelopment Authority (the "Authority") an application dated March 22, 1982 (the "Application") under the provisions of G. L. Chapter 121A and Chapter 652 of the Acts of 1960, both as amended (G. L. Chapter 121A and Chapter 652 of the Acts of 1960, as so amended to date, are referred to herein collectively as "Chapter 121A"), for approval of a project involving rehabilitation and conversion of a former nursing home into a congregate housing facility for low-income elderly residents with supportive services containing ten (10) single resident occupancy units (SRO) and one one-bedroom unit located at 49 Parley Avenue, Boston, MA 02130, and as more particularly described in the Application (the "Project");

WHEREAS, the Authority approved the undertaking of the Project by a Report and Decision approved by vote on October 14, 1982 (the "Report and Decision"), which vote was approved by the Mayor of the City (the "Mayor") on October 25, 1982; and

WHEREAS, the Certificate of Vote of the Authority and the approval of the Mayor were filed with the office of the City Clerk on October 27, 1982;

WHEREAS, the Owner signed a 6A contract with the City on January 15, 1983 (the "Original Contract"); and

WHEREAS, the Owner now wishes to terminate the Original Contract and enter into this Second 6A Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the mutual promises hereinafter set forth, the Owner and the City hereby agree to terminate the Original 6A Contract and enter into this Second 6A Contract as follows:

1. **Use Restrictions.** The Owner shall undertake all activities with respect to the Project in accordance with the Application, the provisions of Chapter 121A, as hereafter amended from time to time, the Rules and Regulations of the Authority, as hereafter amended from time to time, and the Minimum Standards for Financing, Construction, Maintenance and Management of the Project, all as set forth in the Report and Decision (collectively, the "Requirements"), which Requirements are incorporated herein by reference.

2. **Term.** This Second 6A Contract shall be deemed effective as of January 1, 2006 (the "Effective Date"), and shall expire on October 27, 2022, the fortieth (40th) anniversary of the approval of the Report and Decision.

3. **Excise Tax Payments.** The Owner shall pay to The Commonwealth of Massachusetts Department of Revenue, or any successor department or agency ("DOR"), with respect to each calendar year, or portion thereof, that this Second 6A Contract is in effect, the Urban Redevelopment excise required under Chapter 121A, Section 10, as amended from time to time (the "Excise Tax"). Every calendar year the Owner shall provide to the City copies of cancelled check(s) sent to the DOR evidencing payment of the Excise Tax with respect to the preceding calendar year.

4. **Second 6A Contract Payments.**

a. *Amount:* For Calendar Years 2006 through and including Calendar Year 2015, the yearly "6A Contract Payment Amount" shall be equal to nine (9%) percent of the Project's annual Gross Residential Income, as defined in Section 20 below. From Calendar Year 2016 through and including Calendar Year 2017, the yearly "6A Contract Payment Amount" shall be equal to nine and one half (9½ %) percent of the Project's annual Gross Residential Income. For Calendar Year 2018 through and including Calendar Year 2022, the yearly "6A Contract Payment Amount" shall be equal to ten (10%) percent of the Project's annual Gross Residential Income. The Owner shall pay to the City the differential amount, if any, by which the applicable "6A Contract Payment Amount" exceeds the Excise Tax payment for each such calendar year, or portion thereof.

b. *Due Date:* The first 6A Contract Payment, or portion thereof, due under this Second 6A Contract is due on or before April 1, 2007. Thereafter, each 6A Contract Payment, or portion thereof, shall be made on or before April 1 following the end of each calendar year for which such a payment is due.

c. *Partial Payments:* 6A Contract Payments shall be equitably pro rated for any partial year during the term set forth in Section 2.

f. *Late Payments:* Late 6A Contract Payments and gap payments, or any portion thereof, shall bear interest at the rate allowed for in G.L. Chapter 60, as amended from time to time.

5. **Gap Payments.** Upon the termination of this Second 6A Contract the Owner shall pay or cause to be paid a gap payment to cover the time period between the termination date 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 Second 6A Contract. The gap payment shall be paid within six (6) months following the month in which the Second 6A Contract terminates. 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 Second 6A Contract as provided in Chapter 121A; provided, however, the deviations and permissions granted by the Authority pursuant to the Original Report and Decision shall survive such termination and shall remain in effect.

6. **Overpayments.** Any Overpayment (as defined in Section 20) shall, at the election of the City, be refunded to the Owner or applied to reduce the 6A Contract Payment due in the succeeding calendar year. The Owner shall give notice to the City of the discovery of the alleged Overpayment within 30 days of the date the 6A Contract Payment was made. The notice shall be accompanied by supporting documentation, including but not limited to, ward and parcel number of the Project's property, the date payment was made to the DOR and/or the City, the amount of the 6A Contract Payment and/or the Excise Tax payment made, copies of cancelled checks, front and back, for both the DOR and the City.

The alleged Overpayment must not be due to the Owner's failure to provide the financial information required by this Second 6A Contract, or to inaccurate information provided by the Owner. If the Overpayment is due to the Owner's failure to provide required financial information or inaccurate information, the City shall not be obligated to refund any interest, late fees, penalties or fines that may have been assessed by the Commonwealth of Massachusetts or the Collector-Treasurer. The City will not pay interest on any Overpayments.

7. **Delivery and Examination of Financial Statements.** The Owner shall deliver the following financial documents:

- a. To the Commissioner of Assessing, no later than February 10 following the end of each calendar year during which this Second 6A Contract is in effect, (i) a statement of income and expenses for the Project during the preceding calendar year, or portion thereof, and (ii) a Declaration of Liability Return Valuation Form (available from the Assessing Department); and
- b. To the Commissioner of Assessing and the Collector-Treasurer of the City ("Collector-Treasurer"), on or before April 1 of each calendar year during which this Second 6A Contract is in effect, (i) a Declaration of Liability Form (available from the Collector-Treasurer), (ii) an audited report, prepared by a Certified Public Accountant, consisting of a statement of all rental and other income, operating costs, a statement of profit and loss, a balance sheet, and a statement of disposition of funds for the preceding year, and (iii) a certified copy of the Owner's Urban Redevelopment Excise Tax Return (the "Excise Tax Return") as submitted to DOR for the calendar year that closed on the December 31 preceding such April 1.
- c. The Owner hereby authorizes the Commissioner of Assessing, or his or her representative designated in writing, to examine from time to time all Excise Tax

returns and related documents or reports filed with DOR by the Owner or its representative. No further evidence of this authorization is required.

8. **Determination of Fair Cash Value.** During the term specified in Section 2 of this Second 6A Contract, the City of Boston Assessing Department, in accordance with the seventh paragraph of Section 10 of Chapter 121A, shall determine that the fair cash value of the real and personal property constituting the Project, as of each January following the effective date of this Second 6A Contract through and including January of the year following the year in which Owner's property tax exemption under Chapter 121A shall terminate, shall be an amount which, when used in computation of the Excise Tax for or with respect to the previous calendar year, would not result in an Excise Tax greater than the 6A Contract Payment Amount due for such prior calendar year. The Assessing Department agrees to certify as to each of the foregoing fair cash value dates and amounts to DOR and Owner on or before March 1 of each calendar year during such periods, pursuant to the second paragraph of Section 10 of Chapter 121A, provided, however, that if the Owner does not file with the Commissioner of Assessing the financial information set forth in Section 7 of this Second 6A Contract, the Assessing Department, at the sole discretion of the Commissioner of Assessing, may determine the "fair cash value" without regard to the limitations set forth in the seventh paragraph of Section 10 of Chapter 121A and herein.

9. **Amendments to Chapter 121A or Rules and Regulations.** Notwithstanding any language to the contrary in the Application or any other document entered into between the Authority and the Owner, no amendment or modification of the terms and conditions of this Second 6A Contract shall be binding on the City without the prior written consent of the City.

10. **Collection and Enforcement.** The Owner's failure to pay when due the 6A Contract Payment and/or the gap payments, or any portion thereof, shall give the City the right to (a) avail itself of the remedies provided for in G.L. Chapter 60 and/or (b) bring an action to recover unpaid 6A Contract Payments, plus any interest, fees or charges that may have accrued. Furthermore, if the Owner is found to have deliberately withheld information on or misrepresented collection from the Project, relative to its payments under the Second 6A Contract, the Owner shall pay all arrearages plus interest on that amount owed the City (with interest rate equal to the rate allowed for in G. L. Chapter 60), and in addition shall pay and/or reimburse the City for all expense incurred as a result of such withholding or misrepresentation.

11. **Costs To Be Paid By The Owner.** The Owner shall pay for the following costs and expenses:

- a. The cost of having audited reports prepared by an independent certified public accountant; and
- b. The cost of having an audit conducted by the Authority and/or the City of all financial records pertaining to the operations of the Project, including the reasonable cost of engaging the services of a private accounting firm to undertake

such an audit if the City has reasonable cause to believe that the audited reports submitted by the Owner are incorrect in any material respect; and

- c. The reasonable costs and expenses, including attorneys' fees, incurred by the City in enforcing this Second 6A Contract or defending it against challenges brought by the Owner. The City shall have the right to choose legal counsel, with the approval of the Owner, which approval shall not be unreasonably denied or withheld.

12. **Successors/Assigns.**

- a. This Second 6A Contract may be assigned or transferred during the Term specified in Section 2. However, if there is a "Sale/Transfer" of the Project the City reserves the right to change the financial terms of this Second 6A Contract if, in the determination of the Commissioner of Assessing, the tax benefits afforded the Owner can be modified without putting at risk either the economic viability of the Project or the affordability of the dwelling units therein to low-income elderly. The Commissioner of Assessing shall have the right to request financial information, including but not limited to, Operating Pro-Forma projections for the Property, Feasibility Studies, Hold/Sell analysis conducted by either buyer or seller, any appraisals conducted by either the buyer or seller.
- b. If after due consideration of the information provided pursuant to section 7 and Section 12.a. the City determines that either the economic viability of the Project or the affordability of the dwelling units therein to low-income elderly is still dependent on maintaining the same percentage used for calculating the 6A Contract Payment, the Owner's successor or assign shall be entitled to the same terms and conditions of this Second 6A Contract. The successor or assign shall derive the benefits only for the time remaining in the Second 6A Contract.
- c. If on the other hand, the City determines that neither the economic viability of the Project nor the affordability of the dwelling units therein to low-income elderly is dependent on the benefits afforded by this Second 6A Contract, the Owner's successor or assign shall be required to enter into good faith negotiations to determine the new percentage to be applied in calculating the 6A Contract Payment Amounts. The Owner's failure to enter into good faith negotiations shall give the Commissioner of Assessing the right to unilaterally determine the new percentage to be used.
- d. The Owner shall have the burden of notifying the City of the intended Sale/Transfer. The City shall have 30 business days within which to respond, provided the Owner shall have supplied pertinent Sale/Transfer information with its notice. If the City must request additional Sale/Transfer information, the 30 days shall commence upon the City receiving all pertinent Sale/Transfer information.

13. **Notices.** All notices required pursuant to this Second 6A Contract shall be in writing and delivered by hand or mailed postage prepaid, by registered or certified mail, addressed as follows:

If to the City: City of Boston Assessing Department
One City Hall, Room 301
Boston, MA 02201
Attn: Commissioner of Assessing

If to the Owner: Angela Westover Housing Corporation
c/o Jamaica Plain Neighborhood Development Corporation
31 Germania Street
Boston, MA 02130
Attn: Executive Director

With a copy to: Edwards Angell Palmer & Dodge LLP
111 Huntington Avenue
Boston, MA 02199
Attn: Thomas G. Schnorr, Esq.

A different address may be designated by each party by giving written notice to the other party. Any such notice shall be deemed given when so delivered by hand or, if so mailed, two (2) days after such notice is deposited with the U.S. Postal Service.

14. **Pre-Conditions to Obligations of the Owner.** The obligations of the Owner under this Second 6A Contract are conditioned in all respects upon the Project being exempt from taxation under Section 10 of Chapter 121A.

15. **Invalidity.** If any provision of this Second 6A Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Second 6A Contract and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. **Counterparts.** This Second 6A Contract may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

17. **Governing Law.** Notwithstanding anything to the contrary, this Second 6A Contract shall be governed by the laws of the Commonwealth of Massachusetts and any suit, claim or action shall be brought in Suffolk County.

18. **Severability.** If any provision of this Second 6A Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this

Second 6A Contract and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

19. **Captions.** Caption headings are inserted herein only as a matter of convenience and reference and in no way serve to define, limit, or describe the scope or intent of, or in any way affect, this Second 6A Contract.

20. **Definitions.**

- a. **"Gross Residential Income"** shall mean the aggregate of the gross rentals received by the Owner from whatever source derived, including but not limited to, the rents paid by the residential tenants or other occupants of the Project, revenues from the operation of a laundry room, and payments received by the Owner in connection with the Project pursuant to a Housing Assistance Payments Contract with the U.S. Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended, or any similar successor subsidy program (herein called **"Subsidy Amounts"**); expressly excluded from Gross Residential Income, however, are any and all payments received to reimburse the Owner for the reasonable and customary direct cost to the Owner of providing or arranging for meals, meals or food delivery or providing or arranging for other supportive services or supplies to individual residents beyond those provided generally to all or substantially all of the residents.

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 Second 6A Contract prior to the distribution to the Owner of any return on its investment in the Project.

- b. **"Overpayment"** shall include the following, to the extent that they exceed collectively the applicable 6A Contract Payment Amount with respect to any calendar year:

(a) (i) amounts paid by Owner to The Commonwealth of Massachusetts, the City or the Authority with respect to the Project pursuant to Section 15 of Chapter 121A, and (ii) any amounts paid by Owner to the City of Boston as real estate or personal property taxes pursuant to G. L. Chapter 59, as amended, or any successor statute, with respect to the Project for any period during which this Second 6A Contract is in effect whether assessed to Owner or to any predecessor in title of Owner; or (b) amounts paid with respect to the Project as a different or additional tax resulting from the replacement of the current method of assessment of real estate taxes, in whole or in part, by a different method or type of tax or the imposition of an additional type of tax to supplement the current method of assessing real estate taxes in either case upon Owner, and the tenant(s), subtenant(s) and/or subtenants of Owner (such different or additional tax, for example, would include a general or a specific assessment, user fee, tax on real estate rental receipts or any other tax imposed on or required to be collected and paid over by Owner or the tenant(s), subtenant(s) and/or subtenant of Owner for

the privilege of doing business in Boston, for the employment of employees in Boston or levied against real estate or upon the owners or users of real estate as such rather than persons generally for any period during which this Second 6A Contract is in effect); or (c) any amounts paid to the City with respect to the Project in excess of amounts actually due under this Second 6A Contract due to calculation error, subsequent adjustment of the Excise Tax, inaccurate information or other inadvertent mistake. In the event that the Excise Tax for any year shall exceed the 6A Contract Payment Amount applicable for such year, such excess will be deemed to be an Overpayment, and Owner's obligations to the City hereunder shall be correspondingly reduced for future years until such Overpayment has been exhausted.


c. "Sale/Transfer": shall mean:

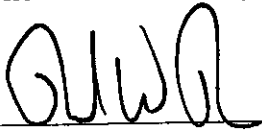
- (i) any sale, transfer or assignment including, without limitation, sales, assignments and transfers by operation of law, by merger, or consolidation, or otherwise, but excluding (1) a foreclosure or deed in lieu of foreclosure and any subsequent sale by a foreclosing lender (or its affiliate) to a third party not affiliated with the Owner, and (2) any such sale, transfer or assignment to an affiliate of the Owner; and
- (ii) Any transfer in a single transaction or series of related transactions of fifty (50%) percent or more of the direct legal or beneficial ownership in the Owner; and
- (iii) in the case of any entity that owns fifty (50%) percent or more of the direct legal or beneficial ownership in the Owner as its only material investment (other than cash and cash equivalents), any transfer in a single transaction or series of related transactions of the direct legal or beneficial ownership in such entity that causes an indirect transfer of fifty (50%) percent or more of the legal or beneficial ownership in the Owner.

A party shall be considered an "affiliate" of or "affiliated" with the Owner if such party (i) in the case of any entity, any partner, shareholder, member or other owner of such entity, provided that such partner, shareholder, member or other owner owns, directly or indirectly, at least twenty (20%) percent of the legal or beneficial ownership of such entity, or has the right to elect or appoint at least twenty percent (20%) of the members or directors of such entity and (ii) any other party which is a parent, a subsidiary or a subsidiary of a parent or owner with respect to such party or with respect to one or more of the persons referred to in the preceding clause (i).

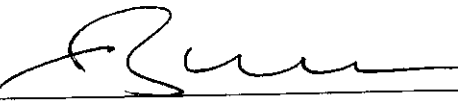
EXECUTED on the day and year first above written.

CITY OF BOSTON



By: 
Thomas M. Menino, Mayor

By: 
Ronald W. Rakow,
Commissioner of Assessing

ANGELA WESTOVER HOUSING CORPORATION

By: 
Adam Burrows
President

Approved as to form:

By: 
William F. Sinnott 
City of Boston
Corporation Counsel