

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

AGREEMENT made this *5<sup>th</sup>* day of *December*, 1979, by and between Back of the Hill Community Development Association, Inc., a charitable corporation organized pursuant to Massachusetts General Laws, Chapter 180 (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 September 4, 1979, (the "Application") under the provisions of Massachusetts General Laws, Chapter 121A, as amended, and Chapter 652 of the Acts of 1960, as amended, for approval of a project situated in the City of Boston, said project being more particularly described in paragraph 3 of said Application and in the metes and bounds description of said Application (the "Project");

WHEREAS, the Application sought the approval of the Authority of a project involving the construction of 125 units of housing for the elderly and handicapped, and appurtenant facilities (the "Project"); and

WHEREAS, the Authority approved the Project by a vote on October 18, 1979 and

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on October 30, 1979 ; 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 6, 1979

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 construction, as hereinafter defined, payments in-lieu-of taxes will be the amount by which \$13,000 exceeds the minimum excise tax formula as specified in the 121A statute (i.e., 5% of gross rental income plus \$10 per \$1,000 of Fair Cash Value of the Property).

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

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

The phrase "residential income from the Project" shall be deemed to mean the aggregate of the gross basic rentals received by the Owner from whatever source derived, including the occupants of the Project and all income received by the Owner pursuant to a Housing Assistance Payments Contract with the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended, or any similar successor subsidy program (subsidy income).

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

Any payments which may become due to the City of Boston on account of the provisions of this Section 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: (i) any payments due by the Owner with respect to any calendar year pursuant to the provisions of Section 15 of said Chapter 121A, as now or hereafter in effect, shall reduce the payments due with respect to such calendar year by the Owner pursuant to the provisions of this contract, but shall not reduce the payments prescribed by Section 10 of said Chapter as now in effect; and (ii) 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 City Assessor, Collector-Treasurer and the Boston Redevelopment 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 City Assessor, within ninety (90) days of the end of each calendar year during which this contract is in effect, an audited report, prepared by a Certified Public 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 expense of the Owner.

If the Owner is found to have deliberately withheld information 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 at all times to cause information required to be submitted to the State Tax Commission under said Chapter 121A to conform to the provisions of this Agreement.

4. The obligations of the Owner under this contract are conditions in all respects upon the issuance to them of all permissions, including without limiting the generality of the foregoing: all variances, permits and licenses which may be required with respect to the construction, maintenance and management of the Project, as specified in the application or reserved therein, and the closing of the mortgage loan for the Project. The Owner shall not be held in any way liable for delays which may occur in the construction, repair, maintenance or management of the Project, or otherwise, by reason of scarcity of materials or labor, labor difficulties, damage by fire or other casualty or any other cause beyond the Owner's reasonable control.

5. The Owner and the City further agree that without written approval of both parties any amendment, subsequent to the execution of this contract of the provisions of M.G.L. Chapter 121A, as now amended or the rules and regulations and standards prescribed by the Authority now applicable to the Project shall not affect the Project.

6. If the Owner or any mortgagee of the Project proposes, acting either under the provisions of the last paragraph of Section 11 or under Section 16A of said Chapter 121A, to transfer the Project to a different entity, Sections 1(a) through 1(c) inclusive, and Sections 3 through 8 inclusive, of the Contract shall, upon such transfer be assignable to any transferee or at the option of the Owner or mortgagee as appropriate, terminable by giving written notice to the City provided, however, that in the event of such assignment the assignee shall agree to such modifications in Section 1(d) hereof as may be required by the City. In the event of such a termination, the Owner shall be released from all obligations under this contract and under said Chapter 121A and at the time shall be divested of all powers, rights and privileges conferred by this Agreement and said Chapter 121A.

7. The provisions of this contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, except that nothing herein contained shall apply in the event a successor in interest elects under option 3 under the provisions of Section 16A of said Chapter 121A as now in effect and that in case of a transfer or termination as contemplated by Section 6 of this contract, the Owner shall thereupon cease to be liable hereunder.

8. The term of this contract shall be for a period that would be coterminous with the U.S. Department of Housing and Urban Development's Subsidy Program 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 officer, Director, or Member of Back of the Hill Community Development Association, Inc., shall have any personal liability for the performance of the obligations of this corporation beyond their capital contributions to the Limited Partnership.

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

BACK OF THE HILL COMMUNITY DEVELOPMENT ASSOCIATION  
INC.

By June F. Howe  
June F. Howe, President

ASSENTED TO:

By Barbara G. Cannon  
Commissioner of Assessing

CITY OF BOSTON

APPROVED AS TO FORM:

By Kevin H. White  
Kevin H. White, Mayor

By John D. Acquin  
Corporation Counsel

DEC 5 1979

**ASSIGNMENT, ASSUMPTION AND MODIFICATION OF A CERTAIN  
CONTRACT REQUIRED BY SECTION 6A OF CHAPTER 121A OF THE GENERAL LAWS  
BETWEEN  
BACK OF THE HILL COMMUNITY DEVELOPMENT ASSOCIATION, INC. AND  
THE CITY OF BOSTON**

This Assignment, Assumption and Modification Agreement (this "Agreement") is made as of this 25<sup>th</sup> day of June 2007, by and among **Back of the Hill Community Development Association, Inc.**, a Massachusetts charitable organization (hereinafter called the "Assignor"), **Back of the Hill Apartments Limited Partnership**, a Massachusetts limited partnership (hereinafter the "Assignee") and the **City of Boston**, a municipal corporation of the Commonwealth of Massachusetts (hereinafter called the "City").

**RECITALS**

A. Assignor filed with the Boston Redevelopment Authority (the "Authority") an application dated September 4, 1979 (the "Original Application"), under the provisions of Chapter 121A of the Massachusetts General Laws and Chapter 652 of the Massachusetts Acts of 1960, both as amended (collectively, "Chapter 121A"), for approval of the Back of the Hills Apartments Chapter 121A Project (the "Project"), including the construction and the operation by the Assignor of 125 residential rental units of housing for low-income elderly families and disabled families known as Back of the Hill Apartments, located at 100 South Huntington Avenue in Jamaica Plain, Massachusetts.

B. The Authority approved the Project by that certain Report and Decision dated October 18, 1979 (the "Initial Report and Decision"), the Mayor of the City of Boston thereafter approved the Initial Report and Decision on October 18, 1979, and the Certificate of Vote of the Authority and approval of the Mayor were thereafter filed with the office of the City Clerk on November 6, 1979.

C. Pursuant to the Initial Report and Decision, the Assignor and the City entered into that certain Contract Required by Section 6A of Chapter 121A of the General Laws (the "Original Section 6A Contract"), a copy of which is attached to this Agreement as Exhibit A.

D. On December 7, 2006, as amended by supplemental letter dated January 9, 2007, the Assignor and Assignee filed with the Authority an Application Pursuant to Massachusetts General Laws Chapter 121A for Approval to Transfer Project and other related Matters (the "Transfer Application") in order to obtain the Authority's approval of the transfer of the Project to the Assignee, as described in the Transfer Application.

E. The Authority approved the transfer of the Project by Assignor to the Assignee pursuant to that certain First Report and Decision Amendment on the Back of the Hill Apartments Chapter 121A Project for the Approval Pursuant to Massachusetts General Laws Chapter 121A and the Acts of 1960, Chapter 652, Both as Amended, for the Transfer of the Previously Approved and Developed on the Back of the Hills Apartments Chapter 121A Project,

and for Consent to Form a New Urban Redevelopment Limited Partnership for the Purpose of Acquiring, Rehabilitating and Continuing the Use of Back of the Hill Apartments as Assisted Housing for Elderly and Disabled Families, dated January 25, 2007 (the "First Amendment to Report and Decision").

F. The Mayor approved such First Amendment to Report and Decision on February 6, 2007; the vote of the Authority and the approval of the Mayor were filed with the Office of the City Clerk on February 9, 2007; and such approval has become final and binding pursuant to the provisions of Chapter 121A.

G. Pursuant to the provisions of Chapter 121A, and as approved by the Authority in the First Amendment to Report and Decision, the City, the Assignor, and the Assignee desire to amend the Original Section 6A Contract and desire further that the Assignee assume the rights and obligations thereunder.

H. Pursuant to the provisions of Chapter 121A and the First Amendment to Report and Decision, the City requires the Assignor and Assignee to enter into this Agreement, whereby the payment percentage to be paid to the City pursuant to Section 6A of Chapter 121A will be twelve percent (12%) of the residential income from the Project.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor, Assignee and the City agree to the following amendments to the Original Section 6A Contract and to the assignment, and assumption, modification of rights and liabilities thereunder:

1. Recitals. The foregoing recitals are hereby incorporated into the Original Section 6A Contract and this Agreement and made a part thereof.
2. Owner. As of the date of this Agreement, the term "Owner" appearing in the Original Section 6A Contract shall mean the Assignor and the Assignee collectively, the parties to this Agreement intending that Assignor and Assignee shall be jointly and severally liable for the Owner's obligations pursuant to said Original Section 6A Contract amended herein.
3. Payments-in-Lieu-of-Taxes. Section 1(d) of the Original Section 6A Contract is deleted in its entirety and is replaced with the following new Section 1(d) which shall become part of the Original Section 6A Contract:

“(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 Section 8 an amount equal to 12% of the residential income from the Project less amounts actually paid to the Commonwealth of Massachusetts under Section 10 of Chapter 121A.

The phrase "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 United States Housing Act of 1937, as amended, or any similar successor subsidy program.

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 or any partners thereof of any return of investment in the Project.

Any payments that 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 following the end of the calendar year for 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 qualify for 121A, any overpayment by the Owner shall be refunded by the City, subject to payment of any gap payment as described herein. For purposes of this contract, an overpayment by Owner hereunder shall include any amounts paid by 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.

Upon termination of this 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 payment that would have been made for such period if the Project had remained subject to this contract. The gap payment shall be paid within six (6) months following the month in which the Project terminates.

Notwithstanding the foregoing provisions: (i) as provided in the First Amended Report and Decision, prior to making any payments due by the Owner with respect to any calendar year pursuant to the provisions of Section 15 of Chapter 121A, as now or hereafter in effect, the Owner may make payment in whole or in part to reduce the Owner's indebtedness with respect to the Project; (ii) any payments due by the Owner with respect to any calendar year pursuant to the provisions of said Section 15 of Chapter 121A shall reduce the payments due with respect to such calendar year by the Owner pursuant to the provisions of this contract, but shall not reduce the payments prescribed by Section 10 of said Chapter as now in effect; and (iii) 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 excise tax.”

4. Delivery and Examination of Financial Statements.

(a) Section 1(e) of the Original Section 6A Contract is deleted in its entirety and is replaced with the following new Section 1(e) which shall become part of the Original Section 6A Contract:

“(e) To file with the Commissioner of Assessing no later than February 10 following the end of each calendar year during which the Original Section 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).”

(b) Section 1(f) of the Original Section 6A Contract is deleted in its entirety and is replaced with the following new Section 1(f) which shall become part of the Original Section 6A Contract:

“(f) To file with 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 Original Section 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 Back of the Hill Limited Partnership Excise Tax Return as submitted to the Commonwealth of Massachusetts. 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 the Commonwealth by the Owner or its representative. No further evidence of this authorization is required.”

5. Assignment and Assumption of Original Section 6A Contract. As of the date hereof, (a) Assignor hereby assigns all its right, title, and interest in the Original Section 6A Contract as amended by this Agreement to the Assignee; (b) the Assignee hereby assumes each and every obligation of the Assignor under said Original Section 6A Contract as amended by this Agreement, including without limitation, the obligations to make the payments and file the reports and forms described in Section 1 thereof; and (c) the City of Boston hereby consents to the foregoing assignment and assumption.

The Assignor and the City of Boston each hereby release the Assignee from any liability regarding payments payable pursuant to Section 1(d) of the Original Section 6A Contract prior to the effective date of this Agreement.

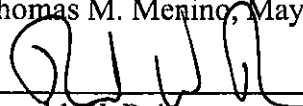
6. Confirmation of the Original Section 6A Contract. Except as modified hereby, the Original Section 6A Contract shall remain in full force and effect and is hereby ratified and confirmed in all respects.
7. Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of the Original Section 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.
8. Governing Law. The laws of The Commonwealth of Massachusetts shall govern the construction, interpretation, validity and legal effect of this Amendment.
9. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
10. Termination Date. This Amendment to 6A Contract shall terminate on November 6, 2019.

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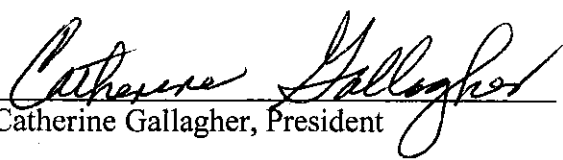
EXECUTED as a sealed instrument the day and year first above written.

**CITY OF BOSTON**

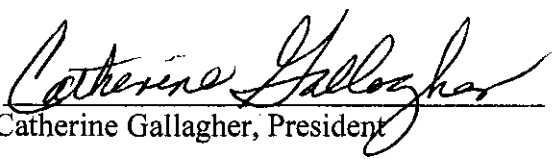
By:   
Thomas M. Menino, Mayor

By:   
Ronald W. Rakow,  
Commissioner of Assessing

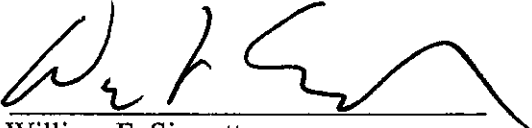
**BACK OF THE HILL COMMUNITY  
DEVELOPMENT ASSOCIATION, INC.,**  
Assignor herein,

By:   
Catherine Gallagher, President

**BACK OF THE HILL APARTMENTS LIMITED  
PARTNERSHIP,**  
Assignee herein,  
By Back of the Hill Apartments, Inc.  
Its General Partner

By:   
Catherine Gallagher, President

APPROVED AS TO FORM:

By:   
William F. Sinnott  
Corporation Counsel *ANC*  
City of Boston

**EXHIBIT A**  
**ORIGINAL SECTION 6A CONTRACT**