

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

AGREEMENT made this 12 day of July, 1979, by and between Marcus Garvey Associates, a Limited Partnership organized pursuant to Massachusetts General Laws, Chapter 109 (the "Owner"), and the CITY OF BOSTON, a municipal corporation of the Commonwealth of Massachusetts (the "City"); acting under Massachusetts General Laws Chapter 121A, Section 6A and every other power and authority hereto enabling.

WITNESSETH THAT:

WHEREAS, there has been filed on behalf of the Owner with the Boston Redevelopment Authority of the Commonwealth of Massachusetts (the "Authority") an application dated March 29, 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 161 dwelling units, ancillary community space and 2,350 square feet of commercial space (the "Project"); and

WHEREAS, the Authority approved the Project by a vote on May 3, 1979; and

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on May 18, 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 May 22, 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.

BOSTON MASS
JUL 12 1979
CITY OF BOSTON
RECEIVED

- (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 each such calendar year or portion thereof prior to and including the calendar year in which completion of the Project, as hereinafter defined, shall occur, twenty thousand (\$20,000.00) dollars per year (Pro Rata) through the month of said completion; plus thereafter, ten (10%) percent of gross residential income of the Project, as hereinafter defined, plus twenty-three (23%) percent of gross commercial income, as hereinafter defined.

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 or occupancy of 90% of the dwelling units whichever comes first.

- (ii) In the first two (2) calendar years following completion of the Project, ten (10%) percent of the gross residential income, as hereinafter defined, plus twenty-five (25%) percent of gross commercial income, as hereinafter defined.

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).

The phrase "gross commercial income" shall be deemed to mean all income received by the Owner from rental of the commercial space in the Project. If the commercial space is occupied by the Owner or a subsidiary, an imputed "fair market rental value" will be attributed to the space occupied by the Owner, or a subsidiary, and will be calculated as gross commercial income.

- (iii) In the third calendar year, and for each year thereafter, twelve (12%) percent of gross residential income, as hereinbefore defined; and thirty (30%) percent of gross commercial income, as hereinbefore defined.
- (iv) 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.
- (v) Notwithstanding the above, the Owner's obligation to make payment of any increased percentage above twelve (12%) percent, with respect to gross residential income only, shall be conditional upon approval and funding of a special rent adjustment by the United States Department of Housing and Urban Development ("HUD") governing the Section 8 rental assistance program, or any successor subsidy program thereto, which approval Owner hereby undertakes to secure.

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 the Project can sustain without suffering an operating loss. For the purpose of this paragraph, whether the Project would sustain 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-cost items and for payments of mortgage amortization, capital acquisitions and the establishment of reserves accepted by HUD.

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 Commissioner of Assessing, the Collector-Treasurer's Office and the Authority within fifteen (15) days of the end of each calendar year during which this contract is in effect a statement of the income and expenses of the Project and the amounts invested in the rehabilitation of the Project.
- (f) To file with the Authority, the Collector-Treasurer's Office and the Commissioner of Assessing within ninety (90) days of the end of each calendar year during which this contract is in effect an audited report, prepared by a Certified Public Accountant, consisting of a statement of all rental and other income, operating cost, construction and replacement cost, a statement of profit and loss for the 121A Corporation, a balance sheet, and a statement of disposition of funds for the preceding calendar year, and a certified copy of the Owner's urban redevelopment excise tax return as submitted to the Department of Corporations and Taxation.

2. Furthermore, the City and/or the Authority can make an annual audit of all financial records pertaining to the operations of the Project under its 121A status and can engage the services of a private accounting firm to undertake such an annual audit at the reasonable 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 incur to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, except that nothing herein contained shall apply in the event a successor in interest elects under option 3 under the provisions of Section 16A of said Chapter 121A as now in effect and that in case of a transfer or termination as contemplated by Section 6 of this contract, the Owner shall thereupon cease to be liable hereunder.

8. The term of this contract shall be for a period that would be coterminous with the U.S. Department of Housing and Urban Development's Subsidy Program or any similar or successor subsidy program. In the

event that the Project ceases to be a totally subsidized program, then this contract will be null and void and a new 6A Agreement will be entered into to reflect this change, or the property will be taxed on the basis of the Fair Market Value at that time.

9. No General or Limited Partner of Marcus Garvey Associates shall have any personal liability for the payment of any monies or the performance of the obligations of the Owner hereunder.

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

MARCUS GARVEY ASSOCIATES

By George J. Macorubis
General Partner

ASSENTED TO:

CITY OF BOSTON

By Barbara G. Cameron
Commissioner of Assessing

By Kevin H. White
Kevin H. White, Mayor

APPROVED AS TO FORM:

By James D. O'Leary
Corporation Counsel