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From Steve
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agreement figures
on Exhibit D

THIS CONTRACT made this 28th day of October, 1967,
under the provisions of Chapter 652 of the Acts of 1960, as
now in effect, and under the provisions of Chapter 121A of
the General Laws of the Commonwealth of Massachusetts, as now
in effect, by and between NEW BOSTON FOOD MARKET DEVELOPMENT
CORP., a corporation organized under said Chapter 121A of the
General Laws, hereinafter called "the Corporation," and CITY
OF BOSTON, a municipal corporation of the Commonwealth of
Massachusetts, hereinafter called "the City."

W I T N E S S E T H T H A T :

WHEREAS, the three incorporators of the Corporation filed
with Boston Redevelopment Authority, hereinafter called "the
Authority," an application dated June 30, 1967 and amended
July 31, 1967, hereinafter called "the Application," under the
provisions of said Chapter 121A of the General Laws and of said
Chapter 652 of the Acts of 1960, as both now in effect, for
approval of an Urban Redevelopment Project, hereinafter called
"the Project," with which a copy of this Contract was filed as
an addendum to the Application; and

WHEREAS, the Authority has approved the Project, and the
Mayor of the City has approved such approval by the Authority,
and such approval by the Authority has otherwise become final

and binding pursuant to the provisions of said Chapter 121A of the General Laws and of said Chapter 652 of the Acts of 1960, as both now in effect;

NOW, THEREFORE;

1. The City AGREES with the Corporation to carry out the undertakings set forth in Exhibit A attached hereto and hereby made part hereof. The City shall not be held in any way liable for delays which may occur in the performance of said undertakings by reason of scarcity of materials or labor, labor difficulties, damage by fire or other casualty or any other cause beyond the City's reasonable control. The City agrees to use due diligence to perform all said undertakings or to cause them to be performed and to overcome all such delays.

2. The Corporation hereby AGREES with the City as follows:

A. To carry out the undertakings set forth in Exhibit B attached hereto and hereby made part hereof.

B. To pay to the City, in lieu of special assessments and betterments, the amounts set forth in Exhibit C attached hereto and hereby made part hereof.

C. To pay to the City, in lieu of taxes, the amounts set forth in Exhibit D attached hereto and hereby made part hereof.

D. To carry out the Project by financing, constructing, maintaining and managing the same in accordance with the

Application, the provisions of said Chapter 121A of the General Laws and of said Chapter 652 of the Acts of 1960, as both now in effect, and the Rules and Regulations setting Minimum Standards for the financing, construction, maintenance and management of the Project set forth in the Authority's approval of the Project, a copy of which Rules and Regulations is attached hereto as Exhibit E and hereby made part hereof.

E. To perform all of its obligations, as provided in any Agreement between it and the Authority.

3. A. The obligations of the Corporation under this Contract are conditioned in all respects upon the following:

- (1) The issuance to it of all permissions, variances, permits and licenses which may be required with respect to the construction, maintenance and management of the Project, whether or not the same were specified in the Application; and
- (2) The entry of an order in the Public Improvement Commission of the City, laying out the public ways or "streets," more particularly described in paragraph 1A of Exhibit A hereto.

B. The Corporation shall not be held in any way liable for delays which may occur in the construction, repair and maintenance of the Project, or otherwise, by reason of scarcity of materials or labor, labor difficulties, damages by fire or other casualty or any other cause beyond the Corporation's reasonable control.

C. The Corporation agrees to use due diligence to secure all said permissions, variances, permits and licenses, to secure the entry of said order and to overcome all such delays.

4. The Corporation and the City AGREE with each other that without mutual consent any amendment subsequent to the delivery of this contract of any of the provisions of said Chapter 121A of the General Laws or of said Chapter 652 of the Acts of 1960, as both now in effect, or of the Rules, Regulations and Standards now applicable to the Project shall not affect the Project.

5. The provisions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that nothing herein contained shall apply in the event any successor in interest to the Corporation shall elect option 3 of Section 16A of said Chapter 121A of the General Laws, as now in effect.

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

NEW BOSTON FOOD MARKET DEVELOPMENT
CORP.

By *Harold M. Dritt*
President

CITY OF BOSTON

By *John F. Collins*
Mayor

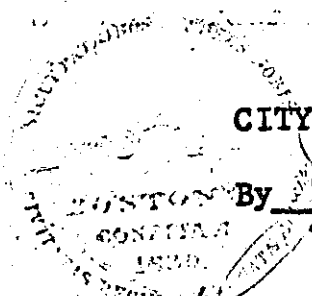


EXHIBIT A

STATEMENT OF UNDERTAKINGS TO
BE CARRIED OUT BY THE CITY

1. The City shall pave, construct and install the following:

A. If the Public Improvement Commission of the City shall enter an order laying out the same, the public ways within the Project Area, hereinafter called "streets," substantially as shown outlined in red on the plan of Symmes, Maini & McKee, Inc. and Henschien, Everds & Crombie attached hereto and dated October 10, 1967, and entitled "Proposed Public Ways," hereinafter called "the Plan," the minimum finished grade of said streets to be at elevation 16.00 above City base; and

B. All street lights, storm drains, sanitary sewers, water lines, hydrants, police and fire signal systems and other public improvements necessary for the development of the Project, whether within or without the Project Area.

2. The City shall commence the work set forth in paragraph 1 of this Exhibit A as soon as reasonably possible after the

City Commissioner of Public Works shall approve the plans and specifications for such work and shall thereafter diligently prosecute such work to completion in accordance with such plans and specifications, or as the same may be changed from time to time with the approval of said Commissioner. The City agrees that none of the approvals heretofore referred to in this paragraph 2 shall be unreasonably withheld or delayed.

3. The City shall also:

A. maintain in good order and repair the streets, street lights, storm drains, sanitary sewers, water lines, hydrants, systems and other improvements referred to in paragraph 1 of this Exhibit A; and

B. keep the streets free from snow, ice, debris and garbage.

4. The City shall also cooperate with the Corporation in all reasonable ways fully to carry out the terms and conditions and intent of the Contract to which this Exhibit A is attached.

EXHIBIT B

STATEMENT OF UNDERTAKINGS TO BE
CARRIED OUT BY THE CORPORATION

1. The Corporation shall, at its expense, supply the City (A) with "the plans and specifications" referred to in paragraph 2 of Exhibit A to the Contract to which this Exhibit B is attached, which plans and specifications shall be prepared in accordance with City Standards, including, without limitation, such plans as may be required by the Public Improvement Commission of the City and such record (as built) plans as may be required by the City Commissioner of Public Works, and (B) with "field coordination of construction" of the work covered by said plans and specifications, as "field coordination of construction" is more particularly described, as follows:

3.4.3 He the Architect-Engineer will provide field coordination of construction by making periodic visits to the site to familiarize himself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Contract Documents. He will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work and he will not be responsible for the Contractors' failure to carry out the construction work in accordance with the Contract Documents, but he shall use reasonable efforts to insure that the contractor shall do so. During such visits and on the basis of his observations while at the site,

he will keep the City of Boston informed of the progress of the work, will use reasonable efforts to guard the City of Boston against defects and deficiencies in the work of Contractors, and he may condemn work as failing to conform to the Contract Documents. Based on such observations and the Contractors' Applications for Payment, he will determine the amount owing to the Contractor and will issue Certificates for Payment in such amounts. These Certificates will constitute a representation to the City of Boston, based on such observations and the data comprising the Application for Payment, that the work has progressed to the point indicated, in full compliance with the Contract Documents. By issuing a Certificate for Payment, the Architect will also represent to the City of Boston that, to the best of his knowledge, information and belief based on what his observations have revealed, the quality of the work is in accordance with the Contract Documents. He will conduct inspections to determine the dates of substantial and final completion and issue a final Certificate for Payment.

2. The Corporation shall also, at its expense, bring the "streets," as "streets" are defined in paragraph 1 of said Exhibit A, to subgrade before the City shall be obligated to start any underground work required to be done by the City under said paragraph 1.

3. Subject to all matters of record and to the retention of all rights necessary in the premises, the Corporation shall also:

A. convey in fee to the City the land area of the streets; and

B. grant to the City such temporary and

permanent easements within the Project Area as may be necessary for the City to perform its undertakings as set forth in paragraphs 1 and 3 of said Exhibit A.

4. The Corporation shall also cooperate with the City in all reasonable ways fully to carry out the terms, conditions and intent of the Contract to which this Exhibit B is attached.

EXHIBIT C

STATEMENT OF AMOUNTS TO BE PAID TO
THE CITY IN LIEU OF BETTERMENTS AND
SPECIAL ASSESSMENTS

1. The Corporation shall pay to the City seventy-five percent (75%) of the City's direct, out-of-pocket costs for the labor and materials it shall use in performing all sanitary sewer work within the property lines of the Corporation's land as shown on the "Plan," as "Plan" is defined in paragraph 1 of Exhibit A to the Contract to which this Exhibit C is attached. Such sum shall be paid by the Corporation to the City, at the Corporation's option (which option shall be exercised within fifteen (15) days after being billed by the City therefor), either:

- (a) in full, without interest, within fifteen (15) days after being billed therefor by the City; or
- (b) in ten (10) equal annual installments, together with interest at the rate of four percent (4%) per annum on the unpaid balance; or
- (c) in twenty (20) equal annual installments, together with interest at the rate of four percent (4%) per annum on the unpaid

balance.

2. In addition to the amount provided in paragraph 1 of this Exhibit C, in the event the City's gross billings for water from all concerns occupying space in the Project Area, during the aggregate of the first five (5) calendar years of the Project's operation, shall be less than twenty percent (20%) of the amount of the City's direct, out-of-pocket costs for the labor and materials it shall use in constructing and installing all water lines within the property lines of the Corporation's land as shown on the Plan, then the difference between such aggregate gross billings and such 20% portion of said costs shall be paid by the Corporation to the City, at the Corporation's option (which option shall be exercised within fifteen (15) days after being billed by the City therefor), either:

- (a) in full, without interest, within fifteen (15) days after being billed therefor by the City; or
- (b) in ten (10) equal annual installments, together with interest at the rate of four percent (4%) per annum on the unpaid balance; or
- (c) in twenty (20) equal annual installments, together with interest at the rate of four percent (4%) per annum on the unpaid balance.

For purposes of this paragraph 2 said "first five (5) calendar years of the Project's operation" shall be deemed to mean the five (5) successive calendar years next succeeding the calendar year in which the Project shall have commenced operations. The Project shall be deemed to have "commenced operations" when the concerns occupying at least eighty percent (80%) of the ground floor building space in the Project Area, as shown on the Plan, as the same may be changed from time to time, shall have commenced doing business there.

EXHIBIT D

STATEMENT OF AMOUNTS TO BE PAID
TO THE CITY IN LIEU OF TAXES.

1968
2008

Except as provided below, the Corporation will pay the City in each of the forty calendar years next following the organization of the Corporation the respective amount, if any, by which the amount hereinafter set forth exceeds the excise prescribed for such calendar year by Section 10 of Chapter 121A of the General Laws, as now existing:

(i) in the first of such calendar years,
\$ 17,000 ;

1969

(ii) in each subsequent calendar year, prior to and including the calendar year in which all the buildings agreed to be constructed by the Corporation shall be completed, \$ 78,000 ; and

1970

(iii) in each subsequent calendar year,
\$ 156,000 ;

but in no event more in any calendar year than an amount equal to the taxes which would have been assessed for such calendar year upon the real estate included in the Project Area and the tangible personal property of the Corporation used in connection

with the operation, maintenance or management of the Project if such real estate and tangible personal property had not been exempt from taxation.

Notwithstanding the foregoing provisions: (a) any payments due by the Corporation 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 payment due with respect to such calendar year by the Corporation pursuant to the provisions of this Exhibit D, but shall not reduce the payments prescribed by Section 10 of said Chapter 121A, as now in effect; and (b) if the Corporation, notwithstanding the provisions of the Contract to which this Exhibit D is attached, shall in any year pay to the Commonwealth of Massachusetts, or any political subdivision thereof any excise or tax measured by the Corporation'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, and the payment provided for by Section 15 of said Chapter 121A, as now in effect, the applicable amount stated in this Exhibit D shall be reduced by the amount of such additional excise or tax. Any overpayment applicable to one calendar year shall, at the election of the City, be either refunded or applied by the City to reduce the payments due in the next calendar year, except that with respect to the last calendar year in the forty-year period referred to above any overpayment by

Section
#10

Section
#15

the Corporation shall be refunded by the City.

EXHIBIT E

MINIMUM STANDARDS FOR FINANCING,
CONSTRUCTION, MAINTENANCE AND
MANAGEMENT OF THE PROJECT

1. Financing. The initial financing of the Project shall be in accordance with the provisions of paragraph 10 of the Application. Subject to the presently existing provisions of Chapter 121A, any financing thereafter may be made without the approval of the Authority if with an insurance company, savings bank or other recognized institutional lender, or with the United States Small Business Administration. All other future financing shall be made only with the prior written approval of the Authority as to the terms thereof and the identity of the lender or lenders, which approval shall not be unreasonably withheld.

2. Construction. The 121A Corporation shall cause the Project to be constructed in a good and workmanlike manner, employing materials of good quality, and so as to conform to the Application and to the zoning, building, health and fire laws, codes, ordinances and regulations in effect in the City, except to the extent that permissions are granted by the Authority with the approval of the Mayor for the Project to deviate from such laws, codes, ordinances or regulations. Whether or not the

construction complies with the Application and with the laws, codes, ordinances and regulations as the same may be varied by said permissions for deviations shall, subject only to judicial review, be determined by the Building Department of the City and all inspections to determine such compliance shall be conducted by it.

3. Maintenance. Upon completion of construction and for the 40 calendar years next following the organization of the 121A Corporation, the 121A Corporation shall, at its own cost and expense, keep and maintain the Project or cause it to be kept and maintained, in not less than a reasonable state of repair, order and condition, ordinary wear and tear and damage by casualty (except to the extent covered by insurance) excepted, and, also at its own cost and expense, keep in force hazard insurance in such amounts as it deems reasonable on improvements on the Project Area.

The reasonable state of repair, order and condition of the Project shall be such as will be conducive to the continuance, during said 40-year period, of the Project's blight-free nature and economic desirability. In this connection, the 121A Corporation shall:

- (a) make, or cause to be made, all necessary replacements of such fixtures and equip-

ment used in connection with improvements in the Project Area, so far as within the control of the 121A Corporation and not owned by tenants, as may from time to time become worn out;

- (b) in case of damage by fire or other casualty to any such fixture or equipment or to any improvement in the Project Area, repair all such damage, or cause it to be repaired, to the extent covered by insurance, in a good and workmanlike manner;
- (c) provide adequate heat during the seasons of the year in which heat is normally required in the City;
- (d) provide services for cleaning and maintaining all common areas;
- (e) provide reasonable lighting for all common areas; and
- (f) make hot and cold water available for drinking, lavatory and toilet purposes.

4. Management. The 121A Corporation may manage the Project itself or employ an independent contractor to undertake such

management. In the event such independent contractor is employed, the compensation paid by the 121A Corporation for such management shall not exceed 5% of the gross rentals derived from the Project or such higher rate as from time to time may be recommended in the Schedule of Recommended Rates adopted by the Boston Real Estate Board or its successor.

The 121A Corporation shall keep and maintain at all times during the aforesaid period of 40 years accounting records conforming to generally accepted accounting principles in which shall be recorded (a) all sums from time to time (i) invested in the Project and (ii) comprising any part of the cost thereof as hereinafter defined, and (b) all information necessary for the computation of (i) the amounts which the 121A Corporation is required to pay pursuant to the provisions of Sections 10 and 15 of Chapter 121A, as now in effect, and (ii) the maximum amounts which the stockholders of the 121A Corporation may receive and accept pursuant to the provisions of Section 9 of said Chapter 121A, as now in effect. Within 90 days after the end of each calendar year wholly or partly included within the period of 40 years referred to above, the 121A Corporation shall submit a statement showing for that calendar year or part thereof included within said 40-year period the amounts of items (b)(i) and (ii) above and in reasonable detail the manner of computation of such amounts. Such statements shall be certified to by independent certified public account-

ants selected and paid for by the 121A Corporation. The Authority shall, at all reasonable times, be permitted to examine and audit all such accounting records and may, in its discretion and at its expense, employ independent certified public accountants to examine and audit such statements and records.

The cost of the Project shall be determined by the addition, without implied limitation, of the following items of expense heretofore or hereafter incurred by the Applicants, or by the 121A Corporation, or by the land-owning corporation, in connection with the planning and construction of the Project:

1. Architectural, engineering, legal and accounting fees and expenses.
2. Cost of the land and cost of site preparation including, without implied limitation, land fill.
3. Cost of maintaining the site and improvements prior to and during the construction period.
4. Cost of insurance, surveys, studies and tests prior to and during the construction period.
5. Cost of all real property improvements including, without implied limitation, buildings, parking facilities, landscaping, walks, driveways, railroad sidings and utility, sewer, drainage and other facilities.
6. Expenditures for acquiring, constructing and installing furniture, furnishings, machinery, equipment and other personal property used or to be used in the construction, operation, use, management and maintenance of the Project which, under generally accepted accounting principles, would be treated as capital expenditures.
7. Fees, taxes, assessments and excises and similar payments

(including payments pursuant to Chapter 121A) prior to and during the construction period.

8. Interest and other financing costs and expenses prior to and during the construction period.
9. All other direct and indirect expenses which, under generally accepted accounting principles, would be treated as capital expenditures.

For the purpose of the computation required by Section 15 of Chapter 121A, as now in effect, the cost of the Project may, at the election of the 121A Corporation, be amortized at such annual rates and methods as in each year during said 40-year period may be allowed to the 121A Corporation by the Internal Revenue Service of the United States of America, or at such other annual rates and methods as are in accordance with generally accepted accounting procedures, provided that no change shall be made in such methods without the Authority's consent, which consent shall not be unreasonable withheld.

**AMENDED AND RESTATED CH 121A CONTRACT
BETWEEN THE CITY OF BOSTON AND
NEW BOSTON FOOD MARKET DEVELOPMENT CORPORATION**

This Amended and Restated Ch 121A Contract is executed as of the 5th day of October, 2007, under Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of the Commonwealth of Massachusetts, is by and between New Boston Food Market Development Corporation (hereinafter the "New Boston"), a corporation organized under said Chapter 121A of the General Laws, and the City of Boston, a municipal corporation of the Commonwealth of Massachusetts (hereinafter called the "City").

WITNESSETH THAT:

WHEREAS, New Boston filed with the Boston Redevelopment Authority (hereinafter the "Authority"), an application dated June 30, 1967, and amended July 31, 1967, (the "Original Application") for Authorization and Approval by the Authority of a Project Under Chapter 121A of the General Laws of the Commonwealth of Massachusetts and Chapter 652 of the Acts of 1960, each as amended with respect to the parcel of land more particularly described on **Exhibit A** attached hereto (the "Project Area") on which it proposed to undertake and to maintain an urban redevelopment project (the "Project"); and

WHEREAS, such Application was approved by the Authority by vote on August 7, 1967, adopting a certain Report and Decision (the "Original Report and Decision"); and

WHEREAS, the Mayor of the City approved the Authority's approval on September 5, 1967; and

WHEREAS, the vote of the Authority and the approval of the Mayor of the City were filed with the office of the City Clerk on September 7, 1967 (the "Approval Date"); and

WHEREAS, New Boston and the City entered into an agreement under Chapter 121A, Section 6A (the "Original 6A Contract") on October 20, 1967; and

WHEREAS, the Report and Decision has been amended four times, as detailed herein. On January 11, 1968, the Authority voted to adopt a First Amendment to the Report and Decision (the "First Amendment") on the Project. Such vote was approved by the Mayor on February 7, 1968, and the vote as so approved was filed with the City Clerk on February 8, 1968. On February 15, 1968 the Authority voted to adopt a Second Amendment to Report and Decision on the Project (the "Second Amendment"). Such vote was approved by the Mayor on March 1, 1968, and the vote as so approved was filed with the City Clerk on March 6, 1968. The First Amendment and Second Amendment approved changes to the financing of the Project, substituted certain tenants in the Project, allowed certain stockholders to dispose of their shares of stock in the corporation before the completion of the Project, as well as changes to the Project Area whereby a plan was approved that illustrated that the Project Area contained approximately 20, instead of the previous 29 acres.

WHEREAS, on November 19, 1970, the Authority voted to adopt an additional Amendment to the Report and Decision (the "Third Amendment") on the Project. Such vote was approved by the Mayor on December 23, 1970. The Third Amendment approved an amortization schedule for the Project.

WHEREAS, on January 17, 2007, the Owner submitted to the Authority an application entitled, "Application of New Boston Food Market Development Corp. to the Boston Redevelopment Authority for Approval of Changes to the Project Area and Related Matters Under Chapter 121A of the General Laws and Acts of 1960, Chapter 652, both As Amended" (the "Fourth Application").

WHEREAS, on January 25, 2007, the Authority approved the Fourth Application and adopted the Fourth Amendment to Report and Decision (the "Fourth Amendment") in accordance with Chapter 121A of the General Laws of the Commonwealth of Massachusetts and Chapter 652 of the Acts of 1960, each as amended; and

WHEREAS, on February 6, 2007, the Mayor of the City of approved the Fourth Application; and

WHEREAS, on February 13, 2007, the vote of the Authority and the approval of the Mayor of the City were filed with the office of the Clerk of the City (the "City Clerk"); and

WHEREAS, the City and New Boston desire to amend and restate the Original 6A Contract and enter into this contract for payments in-lieu-of taxes with respect to the Project (this "Amended and Restated 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 Corporation and the City hereby agree as follows:

1. **Use Restrictions.** The Corporation 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 Amended and Restated Contract shall begin on September 8, 2007, and shall terminate on February 13, 2027.
3. **Excise Tax Payments.** Subject to the provisions and limitations of this Amended and Restated Contract, New Boston shall pay to the Commonwealth of Massachusetts Department of Revenue, or any successor department or agency ("DOR"), with respect to each calendar year, or any portion thereof, that this Amended and Restated Contract is in effect and for which New Boston has the benefit of the tax exemption provided under

Chapter 121A, the Urban Redevelopment excise required under Chapter 121A, Section 10, as amended from time to time (the "Excise Tax"). Every calendar year New Boston 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. **6A Contract Payments.** In addition to the Excise Tax obligations referenced in Section 3 above, and subject to the provisions and limitations of this Amended and Restated Contract, beginning as of September 8, 2007, for Calendar Year 2007, and continuing for each calendar year that this Amended and Restated Contract is in effect and for which New Boston has the benefit of the tax exemption provided under Chapter 121A, New Boston agrees to make an annual 6A Contract Payment to the City of Boston in such amount, if any, by which the amount hereinafter set forth exceeds the Excise Tax prescribed for such calendar year by Section 10 of Chapter 121A of the General Laws.

a. *Amount:*

	121A
2007	341,000
2008	351,230
2009	361,767
2010	372,620
2011	383,799
2012	395,312
2013	480,000
2014	494,400
2015	509,232
2016	524,509
2017	540,244
2018	640,000
2019	659,200
2020	678,976
2021	699,345
2022	720,326
2023	800,000
2024	824,000
2025	848,720
2026	874,182
2027	900,407

For calendar year 2007, New Boston shall pay the amount stated in the above referenced chart. No payment under the Original 6A will be due.

b. *Due Date:* The first 6A Contract Payment, or portion thereof, due under this Amended and Restated Contract shall be paid on or before April 1, 2008.

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.
- d. *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 Amended and Restated Contract New Boston shall pay or cause to be paid a gap payment ("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 due for such period if the Project had remained subject to this Amended and Restated Contract. The Gap Payment shall be paid within six (6) months of when this contract terminates. Upon termination of this Amended and Restated Contract, 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 Amended and Restated Contract; provided, however, the deviations and permissions granted by the Authority pursuant to the Original Report and Decision, as amended, shall survive such termination and shall remain in effect.

6. **Overpayments.** Any Overpayment (as defined below) applicable to a calendar year or any portion thereof, shall at the election of the City, be either refunded to New Boston or applied to reduce the 6A Contract Payment due in the succeeding calendar years, except with respect to the last calendar year, or portion thereof, any Overpayment shall be refunded by the City. New Boston shall give notice to the City of the discovery of the alleged Overpayment within 180 days of the date the 6A Contract Payment was made. The notice shall be accompanied by supporting documentation, including but no 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 Amended and Restated Contract Payment and/or the Excise Tax payment made, copies of cancelled checks, front and back, for both the DOR and the City. Overpayment shall include the following, to the extent that they exceed collectively the applicable Amended and Restated Contract Payment Amount with respect to any calendar year: (a) (i) amounts paid by New Boston to the Commonwealth of Massachusetts or the City with respect to the Project pursuant to Sections 10, 15, and 18C of Chapter 121A, and (ii) any amounts paid by New Boston to the City 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 Amended and Restated Contract is in effect whether assessed to New Boston or to any predecessor in title of New Boston; (b) any amounts paid to the City with respect to the Project in excess of amounts actually due under this Amended and Restated Contract due to calculation error, subsequent adjustment of the Excise Tax,

inaccurate information or other inadvertent mistake; (c) amounts paid by New Boston as a result of a change in the current method of assessment. In the event that the Excise Tax for any year shall exceeds the Amended and Restated Contract Payment Amount applicable for such year, such excess will be deemed to be an Overpayment, and New Boston 's obligations to the City hereunder shall be correspondingly reduced for future years until such Overpayment has been exhausted.

The alleged Overpayment must not be due to New Boston's failure to provide the financial information required by this Amended and Restated Contract or inaccurate information provided by New Boston. If the Overpayment is due to New Boston'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.** New Boston shall deliver the following financial documents:

- a. To the Commissioner of Assessing, no later than the first Monday in February, following the end of each calendar year during which this Amended and Restated 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 Amended and Restated 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 Corporation'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. New Boston hereby authorizes the Commissioner of Assessing, or his or her representative designated in writing, to examine from time to time, upon reasonable notice to New Boston, all Excise Tax returns and related documents or reports filed with DOR by New Boston Corporation or its representative. No further evidence of this authorization is required.

8. **Determination of Fair Cash Value.** During the term specified in Section 2, the City of Boston's 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 1 following the effective date of this Amended and Restated Contract through and including January 1 of the year following the year in which New Boston'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, shall not result in an Excise Tax greater than the Amended and Restated Contract Payment Amount due for such prior calendar year. The City agrees to certify as to each of the foregoing fair cash value dates and amounts to DOR and New Boston 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 New Boston does not file with the Commissioner of Assessing the financial information set forth in Section 7 of this Amended and Restated 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. The maximum "fair cash value"

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 New Boston, no amendment or modification of the terms and conditions of the Amended and Restated Contract shall be binding on either party without the prior written consent of the City.

10. **Collection and Enforcement.** New Boston's failure to pay when due the Amended and Restated 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 New Boston is found to have deliberately withheld information on or misrepresented collection from the Project, relative to its payments under the Amended and Restated Contract, New Boston 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. **Successors/Assigns.** This Amended and Restated Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. After any termination under Chapter 121A as to the Project, or transfer of the Project or Project Area to another party, or termination or transfer of any portion thereof, each in accordance with the approval of the Authority or as otherwise approved by the Authority, New Boston shall no longer be subject to the obligations hereof and shall have no further liability hereunder with respect to the Project or such portion as may have been terminated or transferred.

- a. This Amended and Restated 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 Amended and Restated Contract if, in the determination of the Commissioner of Assessing, the tax benefits afforded New Boston can be modified without putting at risk the economic viability of the Project. 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 the economic viability of the Project is still dependent on maintaining the same percentage used for calculating the 6A Contract Payment, New Boston's successor or assign shall be entitled to the same terms and conditions of this Amended and Restated Contract. The successor or assign shall derive the benefits only for the time remaining in the Amended and Restated Contract.
- c. If on the other hand, the City determines that the economic viability of the Project is not dependent on the benefits afforded by this Amended and Restated Contract, New Boston'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 amount. New Boston'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. New Boston 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 New Boston 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. The City's failure to respond shall be deemed an approval on the intended Sale/Transfer, but only if all documents required by this section have been provided to the City.

For purposes of this section, "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 New Boston, and (2) any such sale, transfer or assignment to an affiliate of New Boston; 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 New Boston; and
- (iii) in the case of any entity that owns fifty (50%) percent or more of the direct legal or beneficial ownership in New Boston 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 New Boston.

A party shall be considered an "affiliate" of or "affiliated" with New Boston if such party is (i) an entity, partner, shareholder, member or other corporation of such entity, provided that such partner, shareholder, member or other corporation 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 corporation with respect to such party or with respect to one or more of the persons referred to in the preceding clause (i).

12. **Notices.** All notices required pursuant to this Amended and Restated 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 New Boston: 15 Widett Circle
Boston, MA 02118
Attn: General Manager

With a copy to: Kevin P. Joyce, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, MA 02110

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.

13. **Pre-Conditions to Obligations of New Boston.** The obligations of New Boston under this Amended and Restated Contract are conditioned in all respects upon the Project being exempt from taxation under Section 10 of Chapter 121A.

14. **Invalidity.** If any provision of this Amended and Restated Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Amended and Restated 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.

15. **Counterparts.** This Amended and Restated 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.

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

17. **Severability.** If any provision of this Amended and Restated Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Amended and Restated 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.


18. **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 Amended and Restated Contract.

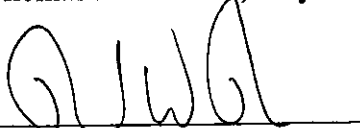
19. **City Obligations.** The City covenants and agrees to comply with and remain responsible for all of its obligations set forth in this Amended and Restated Contract.

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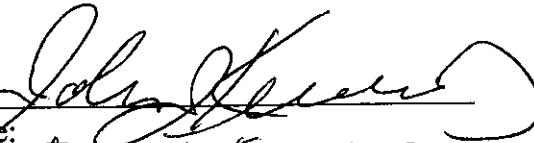
EXECUTED on the day and year first above written.

CITY OF BOSTON

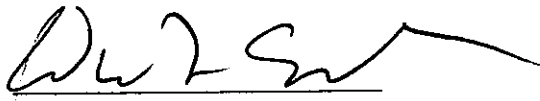
By: 
Thomas M. Menino, Mayor

By: 
Ronald W. Rakow,
Commissioner of Assessing

NEW BOSTON FOOD MARKET DEVELOPMENT
CORPORATION

By: 
Name: JOHN J. KENNEDY

Approved as to form:

By: 
William F. Sinnott
City of Boston
Corporation Counsel