

**Contract**

By and Between

City of Boston

and

**Cottage Brook Housing Limited Partnership**

Pursuant to Section 6A of Chapter 121A  
of the Massachusetts General Laws

This Agreement (the "Agreement") is made this 14<sup>th</sup> day of December, 1992, by and between COTTAGE BROOK HOUSING LIMITED PARTNERSHIP, a limited partnership organized under Massachusetts General Laws Chapter 109, as amended (the "Owner") and the CITY OF BOSTON, a municipal corporation of the Commonwealth of Massachusetts, acting hereunder pursuant to Massachusetts General Laws, Chapter 121A ("Chapter 121A"), Section 6A, as amended (the "City"). Collectively, the Owner and the City are hereinafter referred to as the "Parties".

**WITNESSETH THAT:**

WHEREAS, on July 28, 1977, the Boston Redevelopment Authority (the "Authority") voted to adopt a Report and Decision (the "Report and Decision") on a project known as Cottage Brook Apartments (the "Project"). Such vote was approved by the Mayor of the City of Boston on August 8, 1977 and the vote as approved was filed with the Clerk of the City of Boston on August 10, 1977. The Project, as more particularly described in the Report and Decision, consisted of 147 rental housing units at various scattered locations in the Dorchester and Roxbury sections of the City of Boston and operated pursuant to the requirements of a federal Department of Housing and Urban Redevelopment ("HUD") Section 8 Housing Assistance Payments Contract and the mortgage and regulatory requirements of the Massachusetts Housing Finance Agency ("MHFA"). Cottage Brook Associates, a Massachusetts limited partnership, was approved in the Report and Decision as the Chapter 121A entity to own, operate and manage the Project.

WHEREAS, on September 29, 1977, a certain Agreement under Chapter 121A, Section 6A, was executed by and between Cottage Brook Associates (the "Prior Owner") and the City of Boston (the "6A Contract"). Subsequently, on December 5, 1979, a First Amendment to the 6A Contract was executed. Collectively, the 6A Contract and the First Amendment thereto shall be hereinafter referred to as the "Amended 6A Contract."

WHEREAS, on December 19, 1991, the Authority voted to adopt a First Amendment to the Report and Decision (the "First Amendment"). Such vote was approved by the Mayor on January 3, 1992 and the vote as approved was filed with the City Clerk on January 7, 1992. The First Amendment included inter alia: (a)

approval of the transfer of Project from the Prior Owner to the Owner, as set forth therein, and (b) recognition of the Rehabilitation Program for the Project approved by MHFA as set forth therein. Hereinafter, the Report and Decision and the First Amendment thereto shall be referred to collectively as the "Amended Report and Decision".

WHEREAS, the Owner entered into a Regulatory Agreement with the Authority as required by Chapter 121A, Section 18C and the First Amendment, Section D(6), of even date herewith (the "Regulatory Agreement").

WHEREAS, the First Amendment, Section D(6), required the Owner to enter into a 6A Contract under Chapter 121A, to supersede and replace the Amended 6A Contract. This Agreement is the 6A Contract contemplated by the First Amendment.

**NOW, THEREFORE:**

1. The Parties agree that, except as hereinafter provided, this Agreement shall supersede and replace the Amended 6A Contract.

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

(a) To carry out the Project by operating, maintaining and managing the same in accordance with the Amended Report and Decision and the Regulatory Agreement. A list of the properties which constitute the Project by address, Assessors' Parcel number and number of units (the "Project Properties") is attached hereto as Exhibit "A" and incorporated as if fully set forth herein.

(b) To pay to the Commonwealth of Massachusetts, its Department of Revenue or any successor department or agency, with respect to each calendar year or any portion thereof that this Agreement is in effect and applicable, the Urban Redevelopment Excise Tax required under Chapter 121A, Section 10, as now amended or as may be amended in the future (the "Excise Tax").

(c) To pay to the City with respect to each of the calendar years or any portion thereof that this Agreement is in effect and applicable, as hereinafter stated in Section 12 of this Agreement, the amount calculated in accordance with Section 1(C) of the Amended 6A Contract, to the extent such amount exceeds the Excise Tax. The Amended 6A Contract is set forth in Exhibit "B" attached hereto and incorporated as if fully set forth herein. The payment for each calendar year shall be due and payable on April 15 of the next calendar year.

(d) 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 or portion thereof 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 shall include any amounts paid by it to the City as real estate taxes pursuant to Chapter 59 of the General Laws, with respect to the Project Properties for any period during which this Agreement is in effect. If the Owner shall in any calendar year pay to the Commonwealth of Massachusetts or any political subdivisions thereof, any excise or tax measured by its income from or investment in the Project additional to the Excise Tax provided for by Section 10 of Chapter 121A as now in effect, the applicable amount stated in or computed in accordance with Section 2(c) above of this Agreement shall be reduced by the amount of such additional excise or tax.

3. The Owner shall file with the Commissioner of Assessing, the Collector-Treasurer 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 same during the preceding calendar year in accordance with Section 7 of the Regulatory Agreement.

4. The Owner shall file with the Commissioner of Assessing within fifteen (15) days of the end of each calendar year during which this Agreement is in effect a rent roll identifying each tenant or occupant in the Project Properties by name, address, unit number, unit size and description, rent due, rent collected, whether the unit is being rented pursuant to a lease or a tenancy at will agreement, and copies of all leases and/or tenancies at will agreements. Owner shall allow representatives of the Commissioner of Assessing to inspect any and all portions of the Project Properties at any reasonable time on five (5) days notice in writing.

5. The Owner shall file with the Commissioner of Assessing, the Collector-Treasurer and the Authority within ninety (90) days of the end of each calendar year during which this Agreement is in effect a completed and signed Declaration of Liability Return, a form made available by the Collector-Treasurer, 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 Excise Tax Return.

6. If the Owner fails to submit the audited report required by Section 5 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 Properties 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 Properties, relative to its payments under Section 2(b) and (c) of this Agreement, the Owner shall pay all arrearages plus interest on any additional amount owed the City (with interest rate equal to the rate charged for delinquent real estate tax accounts by the Collector-Treasurer's Office), and also pay and/or reimburse the City or the Authority for all expenses incurred as a result of or in the investigation of such withholding or misrepresentation.

7. The Parties acknowledge that as long as this Agreement is in effect the Assessing Department of the City shall determine in its sole discretion the fair cash value of the Project Properties for each calendar year or any portion thereof pursuant to Section 10 of Chapter 121A.

8. The Parties further agree that without written approval of both Parties any amendment, subsequent to the execution of this Agreement of Chapter 121A and the rules, regulations and standards prescribed by the Authority which might otherwise be applicable to the Project shall not affect the same.

9. If the Owner or any mortgagee of the Project Properties proposes, acting either under the provisions of the third and last paragraph of Section 11 or under Section 16A of Chapter 121A, to transfer the Project to a different entity, this Agreement may, upon approval of 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 transfer the transferee shall agree to such modifications in Section 2(c) of this Agreement as may be required by the City.

10. 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 on office or interest, and assigns.

11. The Owner agrees to pay all amounts that may be due from the Prior Owner with respect to the Project as Excise Taxes or payments under the Amended 6A Contract which are outstanding and have not been paid as of the date of this Agreement.


12. This Agreement shall continue for a term of 40 years from August 10, 1977, the date of initial approval of the Project.

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

CITY OF BOSTON

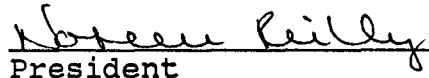
By: 

Raymond L. Flynn, Mayor

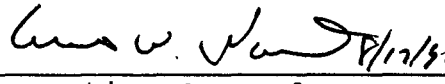

By:   
Thaddeus J. Jankowski, Jr.,  
Commissioner of Assessing

**COTTAGE BROOK HOUSING LIMITED  
PARTNERSHIP**

By: DBCB Housing, Inc., Its  
General Partner

By:   
President

APPROVED AS TO FORM:

  
Corporation Counsel  
City of Boston 

## EXHIBIT "A"

List of Project Properties

<u>Parcel No.</u>	<u>Address</u>	<u>Assessors' Parcel Nos.</u>	<u>No. of Units</u>
1	88 Brook Ave.	13-00037	1
	90 Brook Ave.	13-00036	1
	92 Brook Ave.	13-00035	1
	94 Brook Ave.	13-00034	1
	96 Brook Ave.	13-00033	1
	98 Brook Ave.	13-00032	1
	100 Brook Ave., Dor.	13-00031	1
2	93 Brook Ave.	13-00049	6
	95 Brook Ave., Dor.		
3	124 Brook Ave.	13-00022	3
	126 Brook Ave.	13-00021	3
	128 Brook Ave.	13-00020	3
	130 Brook Ave.	13-00019	3
	132 Brook Ave., Dor.	13-00018	3
4	589 Dudley St.	13-00067	4
	591 Dudley St.	13-00068	4
	593 Dudley St.	13-00069	4
	595 Dudley St.	13-00070	4
	597 Dudley St.	13-00071	vacant land
	599 Dudley St., Dor.	13-00072	vacant land
5	610 Dudley St.	08-00122	vacant land
	614 Dudley St.	08-00121	4
	616 Dudley St., Dor.	08-00120	4
6	622 Dudley St.	08-00117	3
	624 Dudley St.	08-00116	3
	626 Dudley St.	08-00115	4
	628 Dudley St., Dor.	08-00114	4
7	9 E. Cottage St.	08-00134	3
	11 E. Cottage St., Dor.	08-00135	3
8	95 Intervale St., Dorchester	14-00378	3
9	119 Intervale St., Dorchester	14-00385	3
10	17 Leyland St.	08-00145	vacant land
	19a Leyland St.	08-00146	3
	21 Leyland St.	08-00147	3
	23 Leyland St.	08-00148	3
	25 Leyland St.	08-00149	3
	27 Leyland St.	08-00150	3
	29 Leyland St.	08-00151	3

EXHIBIT "A"  
Cont'd.

<u>Parcel No.</u>	<u>Address</u>	<u>Assessors' Parcel Nos.</u>	<u>No. of Units</u>
	31 Leyland St.	08-00152	3
	33 Leyland St.	08-00153	3
	35 Leyland St.	08-00154	3
	37 Leyland St., Dor.	08-00155	4
11	8 Magnolia St., Dorchester	13-01060	2
12	10 Magnolia St., Dorchester	13-01059	2
13	12 Magnolia St., Dorchester	13-01058	2
14	16 Magnolia St., Dorchester	13-01056	2
15	20 Magnolia St., Dorchester	13-01054	2
16	24 Magnolia St., Dorchester	13-01052	2
17	61 Normandy St., Dorchester	14-00484	3
18	45 Stoughton St., Dorchester	13-01360	16
19	11 West Cottage St., Dorchester	13-03174	2
20	18 West Cottage St., Dorchester	13-00007	2
21	95 Woodledge St., Dorchester	13-00570	3

Amended 6A Contract

The Amended 6A Contract consists of the following documents:

1. "Agreement Between The City of Boston and Cottage Brook Associates Under G.L. c. 121A, §6A", dated September 29, 1977, between Cottage Brook Associates and the City of Boston; and
2. "First Amendment To Agreement Between The City of Boston and Cottage Brook Associates Under G.L. c. 121A, §6A", dated December 5, 1979.



AGREEMENT BETWEEN THE CITY OF BOSTON

AND

COTTAGE BROOK ASSOCIATES

UNDER G.L. c.121A, s.6A

Agreement made this 14 day of September, 1977 by and between Cottage Brook Associates, a limited partnership organized under G.L. c.109 ( Cottage Brook ) and the CITY OF BOSTON a municipal corporation of the Commonwealth of Massachusetts (the "City" acting under G.L. c.121A, s.6A and every other power and authority hereto enabling.

WHEREAS, an application dated December 2, 1976 (the "Application" was filed by Cottage Brook with the Boston Redevelopment Authority (the "Authority") under the provisions of G.L. c.121A for approval of a project (the "Project") involving the rehabilitation of 50 variously located apartment buildings in Dorchester and Roxbury into approximately 147 apartment units, with which Application a copy of this form of contract was filed as an exhibit; and

WHEREAS, the Authority approved the Project by a vote adopted July 28, 1977;

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on August 8, 1977;

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 August 10, 1977.

NOW, THEREFORE,

1. Cottage Brook hereby agrees with the City as follows:
  - A. To carry out the Project by constructing, operating and maintaining the same in accordance with the Application and the provisions of G.L. c.121A, as now existing, and the rules and regulations setting minimum standards for the financing, construction, maintenance and management of the Project as set forth or referred to in the Authority's approval of the Project.
  - B. To pay to the Commonwealth of Massachusetts in each of the 15 calendar years following approval of the Project, and in each of the following 25 years included within the Project's extension period pursuant to G.L. c.121A, s.10, with respect to the Project's separate existence at any time within the preceding calendar year, the excise tax payable under G.L. c.121A, s.10. In connection therewith, the Assessing Department hereby determines, and shall continue from time to time to determine, for purposes of the seventh paragraph of G.L. c.121A, s.10, and shall certify to the State Tax Commission and to the Owner annually pursuant to the second paragraph of G.L. c.121A, s.10 so long as this contract is in effect, a fair cash value of the Project which shall not exceed (but may be less than) that amount which would result in an annual excise tax under G.L. c.121A, s.10 equal to the minuend

amounts prescribed by Paragraph C. (i) (a), (ii) (a) and (iii) (a) below applicable to the year in question, (excluding the amounts due under C. (iv)).

C. In addition to the excise payable under G.L. c.121A, s.10, to pay the City in each of the 15 calendar years following approval of the Project, and in each of the following 25 years included within the Project's extension period pursuant to G.L. c.121A, s.10, with respect to its separate existence at any time within the preceding calendar year, the amount, if any, by which the excise prescribed by G.L. c.121A, s.10 is exceeded by:

(i) With respect to the year ending December 31, 1977,

(a) Thirty Six Thousand Dollars (\$36,000);

(ii) With respect to the year ending December 31, 1978,

(a) Forty Four Thousand Dollars (\$44,000);

(iii) With respect to the years ending December 31, 1979 and each December 31 thereafter;

(a) 10% (subject to increase as stated below) of the annual residential gross income actually received by the Project during the year in question; and

(iv) the following amounts for the years indicated:

1979	\$9,238.00
1980	6,536.00
1981	7,253.00
1982	7,971.00

1983	\$ 3,638.00
1984	9,405.00
1985	10,123.00
1986	10,340.00

The percentage of annual residential gross income stated in subparagraph C. (iii) (a) above shall, for each calendar year ending after December 31, 1979, be determined by the Commissioner of Assessing of the City of Boston based solely upon substantial general increases in the real estate tax rate in the City of Boston, which percentage may in no event increase by more than 1 1/2% over the applicable percentage for the next preceding year; provided that the applicable percentage of annual residential gross income shall never exceed 20%; and provided further that no increase in the applicable percentage of the annual residential gross income, or any portion thereof, determined by the Commissioner as aforesaid, in excess of the original rate of 10% shall be payable by Cottage Brook until the United States Department of Housing and Urban Development or other governmental agency providing rental subsidy to the Project, has funded such increase and Cottage Brook has received such funds. The amounts payable under subparagraph C. (iv) shall cease to be payable for and after any calendar year in which any action is brought, or proceedings are undertaken, for foreclosure of a mortgage or lien on the Project which results in conveyance or other transfer of Cottage Brook's

interest in the Project to a successor, or in which Cottage Brook in order to avert such action or proceedings conveys or releases its interest in the Project to any successor.

- D. To file with the Assessors within fifteen (15) days of the end of each calendar year a statement of the income and expenses of the Project, and the construction cost, replacement cost, and book value of the same for the preceding calendar year.
- E. To file with the Assessors within ninety (90) days of the end of each calendar year an audited report by a certified public accountant consisting of a statement of profit and loss, a balance sheet, and statement of receipts and disposition of funds for the preceding calendar year, and a certified copy of the Urban Redevelopment Excise Return as submitted to the Department of Corporations and Taxation.
- F. To submit to the Commissioner of Assessing or his designated representative written authorization to examine all Urban Redevelopment Excise Returns and attachments thereto, which Cottage Brook files with the Department of Corporations and Taxation.
- G. To perform all of its obligations under a certain Regulatory Agreement dated September 23, 1977 between Cottage Brook and the Authority, pursuant to G.L. c.121A, s.18C, which Agreement is incorporated herein by reference.

H. To make payment of any amounts which may become due under the provisions described in paragraph 1C no later than fifteen (15) days from the date on which the excise is due to the Commonwealth of Massachusetts.

2. Cottage Brook and the City Agree that, without mutual consent, any amendment subsequent to the deliver of this Agreement of any of the provisions of G.L. c.121A, or of Chapter 652 of the Acts of 1960, as amended, or the Rules, Regulations and Standards now applicable to the Project shall not affect the Project.

3. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

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

ASSENTED TO:

By: Barbara G. Cameron  
Barbara G. Cameron,  
Commissioner of Assessing

COTTAGE BROOK ASSOCIATES  
Cobrook Corporation, General Partner

By: Lawrence R. Smith  
Lawrence R. Smith, President

APPROVED AS TO FORM:

By: Herbert P. Gleason  
Herbert P. Gleason,  
Corporation Counsel

CITY OF BOSTON

By: Kevin H. White  
Kevin H. White, Mayor

FIRST AMENDMENT

TO

AGREEMENT BETWEEN THE CITY OF BOSTON

AND

COTTAGE BROOK ASSOCIATES

UNDER G.L. c.121A, s.6A

First Amendment made this 5th day of December 1979 to the Agreement (the Agreement) dated September 29, 1977, between COTTAGE BROOK ASSOCIATES (COTTAGE BROOK ASSOCIATES), a limited partnership organized under G.L. c.109, and the City of Boston, a municipal corporation of the Commonwealth of Massachusetts (the "City"), acting under G.L. c.121A s.6A and every other power and authority hereto enabling.

WHEREAS, COTTAGE BROOK ASSOCIATES has received the Approval of the Boston Redevelopment Authority and the City under G.L. c.121A to rehabilitate apartment buildings in Dorchester and Roxbury into 147 apartment units (the Project) as more fully set forth in the Agreement.

In connection therewith, COTTAGE BROOK ASSOCIATES has entered into the Agreement with the City under G.L. 121A s.6A to pay certain amounts to the City in excess of the excise required by G.L. c.121A, s.1

The Agreement, which provides for payments under G.L. c.121A, s.10 and 6A aggregating \$36,000 for 1977 and \$44,000 for 1978, the years during which the Project is under construction, and for payment of stated percentages of Project gross income thereafter, was based upon the mutual assumption that COTTAGE BROOK ASSOCIATES would, by virtue of the approval under G.L. c. 121A, be exempt from municipal real estate taxes after the fiscal year 1977.

Due to unforeseen and unavoidable delays in Project approval, COTTAGE BROOK ASSOCIATES has become liable for fiscal year 1978 real estate taxes for the Project in addition to calendar year 1977 and 1978 excise taxes under G.L. c.121A, s.10 and 6A.

The parties wish to amend the Agreement to alleviate this unintended double taxation, without reducing the amounts previously agreed to be paid by COTTAGE BROOK ASSOCIATES to the City under the Agreement.

THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, COTTAGE BROOK ASSOCIATES and the City amend the Agreement thus:

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 the Owner hereunder shall include any amounts paid by the Owner to the City of Boston as real estate taxes, but not amounts paid as interest on past due real estate taxes, pursuant to General La



Chapter 59, with respect to the Project Area for Fiscal Year 1978, whether assessed to Owner or to any predecessor in title of the Project Area.

ASSENTED TO:

COTTAGE BROOK ASSOCIATES  
BY: Cobrock Corporation, its general partner

BY: Barbara G. Cameron  
Barbara G. Cameron  
Commissioner of Assessing

BY: Lawrence B. Smith  
its president, hereunto  
duly authorized

APPROVED AS TO FORM:

CITY OF BOSTON

BY: Joseph D. Alviani  
Joseph D. Alviani  
Corporation Counsel *JDA*

BY: Kevin H. White  
Kevin H. White, Mayor

DEC 5 1978