

CONTRACT REQUIRED BY SECTION 6A  
OF CHAPTER 121A OF THE GENERAL LAWS

AGREEMENT made this 18 day of September, 1978, by and between MASON PLACE COMPANY, a limited partnership, organized pursuant to Massachusetts General Laws, c. 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 January 3, 1978, (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 4 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 conversion and rehabilitation of 129 dwelling units for the elderly and handicapped and appurtenant facilities (the "Project");

WHEREAS, the Authority approved the Project by a vote on March 9, 1978;

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on April 6, 1978; 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 April 11, 1978.

NOW, THEREFORE :

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

(a) To carry out the Project by rehabilitating, amaintaining, and managing the same in accordance with the Application, the provisions of Massachusetts General Laws, Chapter 121A, as now in effect, the Rules and Regulation 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 §, 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 first year during construction Ten Thousand Dollars (\$10,000.00) and Ten Thousand Dollars (\$10,000.00) plus ten percent (10%) of residential income in each subsequent year until completion of the Project.

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) With respect to each such calendar year next following the calendar year in which completion of the Project, as hereinbefore defined, occurs through the fortieth year during which the Project is subject to the provisions of said Chapter 121A, ten percent (10%) of residential income from the Project, as hereinafter defined, but in no event more for any calendar year than the amount which would have been payable to the City of Boston had the real estate and improvements thereon in the Project Area and the tangible personal property of the Owner used in connection with the operation of the Project not been exempted from taxation.

Notwithstanding the foregoing, Owner agrees that commencing in the third calendar year subsequent to completion of the Project, and every third year thereafter, the percentage of residential income payable by Owner shall be such increased percentage as shall be determined by the Commissioner of Assessing of the City of Boston based on substantial general increases in real estate taxes in the City of Boston, provided that no such increased percentage shall exceed by more than one percent (1%) the last applicable percentage of residential income except that the first such increase may be in an amount up to two percent (2%), and in no event shall such percentage exceed fifteen percent (15%). Except as provided in the following paragraph, Owner's obligation to pay any such increased percentage of residential income in excess of twelve percent (12%) shall be conditioned upon approval and funding of a special rent adjustment therefor by the United States Department of Housing and Urban Development ("HUD") pursuant to statutes and regulations of HUD governing the Section 8 rental assistance program, or any successor program thereto, which approval Owner hereby undertakes to secure. The City hereby acknowledges that pursuant to said statutes and regulations, Owner may not, for the purpose of paying any increased percentage of residential income pursuant to this Section 1(d) (ii), adjust the rentals charged for any dwelling unit in the project above rent levels approved by HUD and that revised rent levels resulting from HUD approved and funded adjustments shall not result in HUD's judgment in material differences between rents charged for units receiving rental assistance and comparable unassisted units.

Notwithstanding the foregoing, the parties hereto agree that with respect to the third through ninth calendar years following completion of

the Project the Owner's obligation to make payment hereunder of any increased percentage of residential income from ten percent (10%) to twelve percent (12%) shall be reduced to the extent that the Project would suffer an operating loss by virtue of the obligation to make payment of such increased percentage. For any calendar year subsequent to such ninth calendar year following completion of the Project or subsequent to the calendar year in which the Owner shall have paid to the City twelve percent (12%) of residential income from the project, whichever shall first occur, if HUD shall not have approved and funded any percentage increase of residential income payable by Owner in excess of twelve percent (12%), 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. Without limiting the foregoing, it is the intent of the parties hereto that the Owner shall for any calendar year discharge the contractual obligation pursuant to this Section 1(d) (ii) prior to the distribution to Owner of any return on its investment in the Project. For purposes of this paragraph, whether the Project would suffer an operating loss, and the amount thereof, shall be determined by the certified operating statement submitted by Owner to HUD for the fiscal year to which such increased percentage would be applicable, adjusted for all non-cash items and for payments of mortgage amortization, capital acquisitions and the establishment of reserves accepted by HUD.

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 the forty-year period referred to above 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; (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 Assessors 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 Assessors 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 profits and loss, a balance sheet, and a statement of receipts and disbursements 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.

(g) To submit to the Commissioner of Assessing or his designated representative written authorization to examine all urban redevelopment excise tax returns and attachments thereto filed by the Owner with the Department of Corporations and Taxation.

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 U.S. Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended, or any similar successor subsidy program (subsidy income).

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.

If the Owner is found to have deliberately withheld information on 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, including the cost of the audit, 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 conditioned 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 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 of any mortgagee of the Project propose, 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 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 Mason Place Company shall have any personal liability for the performance of the obligations of Mason Place Company hereunder.

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

MASON PLACE COMPANY

By Walter K. Winchester  
Walter K. Winchester

By John R. Gallagher  
John R. Gallagher

ASSENTED TO:

By Barbara H. Cameron  
Commissioner of Assessing

CITY OF BOSTON

By Kevin H. White  
Kevin H. White, Mayor

APPROVED AS TO FORM:

By Herbert G. Pearson  
Corporation Counsel

**FIRST AMENDMENT TO  
CONTRACT BETWEEN  
MASON PLACE COMPANY AND THE CITY OF BOSTON  
PURSUANT TO  
MASSACHUSETTS GENERAL LAWS c. 121A, s. 6A**

This Agreement (the "Amendment") made as of this 31<sup>st</sup> day of January, by and between Mason Place Company, a Massachusetts 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 the authority of Massachusetts General Laws, chapter 121A, section 6A, and every power and authority hereto enabling.

WHEREAS, there has been filed on behalf of the Owner with the Boston Redevelopment Authority of the Commonwealth of Massachusetts (the "Authority") an application dated January 3, 1978 (the "Application") under the provisions of Massachusetts General Laws, chapter 121A, and chapter 652 of the Acts of 1960, as amended, for approval of a project situated in the City of Boston, involving the conversion and rehabilitation of 129 dwelling units and appurtenant facilities, said project being more particularly described in paragraph 4 of said Application and in the metes and bounds description thereto annexed (the "Project");

WHEREAS, the Authority approved the Project and adopted the Report and Decision by vote on March 9, 1978, approved by the Mayor of the City of Boston on April 6, 1978 and filed with the office of the City Clerk on April 11, 1978;

WHEREAS, the Owner and the City pursuant to Massachusetts General Laws, chapter 121A, section 6A entered into that certain contract dated September 18, 1978 (the "Contract");

WHEREAS, the Authority approved the First Report and Decision Amendment by vote on December 19, 1985, approved by the Mayor of the City of Boston on January 13, 1986 and filed with the office of the City Clerk on January 14, 1986;

WHEREAS, the Authority approved the Second Report and Decision Amendment by vote on November 21, 2000, approved by the Mayor of the City of Boston on November , 2000 and filed with the office of the City Clerk on November , 2000;



WHEREAS, the Second Report and Decision Amendment authorized the reduction in the number of dwelling units from 129 to 127 and the approval of approximately 15,000 to 20,000 square feet of ground floor and basement space for retail/commercial use and appurtenant facilities; and

WHEREAS, the Owner and the City acknowledge that the adoption of the Second Report and Decision Amendment requires the amendment of the Contract to provide for payments to be made by the Owner with respect to the retail space.

NOW THEREFORE:

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

A. That the paragraphs of Section 1(d)(ii) of the Contract beginning with the words on page 3 of the Contract: "(ii) With respect to each such calendar year next following the calendar year...", and ending with the words at the end of the continuation of the second paragraph of such section on page 4 of the Contract: "...amortization, capital acquisitions and the establishment of reserves accepted by HUD" is hereby amended by striking out said paragraphs and replacing the same with the following:

(ii) With respect to calendar year 2001 through the term of the Contract during which the Project is subject to the provisions of said Chapter 121A, eight percent (8%) of residential income from the Project, as hereinafter defined, and twenty percent (20%) of the retail/commercial income of the Project .

B. That the following Section 10 is added to the Contract:

10. The Assessors hereby agree, pursuant to authority conferred by Section 10 of Chapter 121A, that the maximum fair cash values as of January 1 in each year of the land, buildings and tangible personal property constituting the Project shall be established in such manner that the maximum amount to be paid by the Owner pursuant to Chapter 121A, Section 10 and Section 1(d) hereof shall never exceed the amounts determined by Section 1(d) hereof, and agree that such fair cash values will be certified to the Massachusetts Department of Revenue and to the Owner in each year the Project is subject to Chapter 121A.

2. All other provisions of this Contract shall remain in full force and effect, except as modified herein.

EXECUTED under seal the day and year first above written.

MASON PLACE COMPANY

By: W.K. Winchester  
Walter K. Winchester, as general partner

By: J.R. Gallagher, III  
John R. Gallagher, III, as general partner

CITY OF BOSTON

Approved as to form:

By: Mark Sweeney  
for Merita A. Hopkins  
Corporation Counsel

By: Thomas W. Menino  
Mayor

By: A.W.A.  
Commissioner of Assessing

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**SECOND AMENDMENT TO CONTRACT REQUIRED  
BY SECTION 6A OF CHAPTER 121A OF THE GENERAL LAWS**

**Mason Place Apartments**

This Second Amendment to Contract Required by Section 6A of Chapter 121A of the General Laws (this "Second Amendment") is made as of the 26<sup>th</sup> day of February, 2004, but effective upon the Effective Date, as hereinafter defined, by and between Mason RHF Limited Partnership, a Massachusetts limited partnership (the "Owner") and the City of Boston, a municipal corporation of the Commonwealth of Massachusetts (the "City"), acting under the authority of Massachusetts General Laws, Chapter 121A, section 6A, and every power and authority hereto enabling.

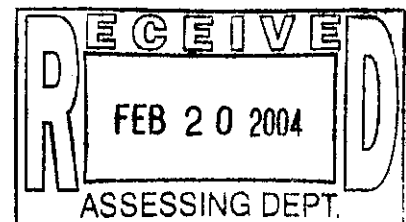
WHEREAS, the Owner has caused to be filed with the Boston Redevelopment Authority (the "Authority") an application dated January 21, 2004 pursuant to Chapter 652 of the Acts of 1960, as amended and Chapter 121A of the Massachusetts General Laws for authorization and approval by the Authority for the acquisition by the Owner from the Mason Place Company, a Massachusetts limited partnership (the "Original Owner") of the multi-story apartment building containing one hundred twenty seven (127) dwelling units for the elderly and handicapped, and approximately 15,000 to 20,000 square feet of accessory ground floor and basement level retail space and appurtenant facilities, known as Mason Place Apartments and numbered 80 Mason Street, Boston, Massachusetts (the "Project");

WHEREAS, such acquisition was approved by the Authority by vote on January 29, 2004 adopting a Third Amendment to Report and Decision Authorizing and Approving the Application by Mason RHF Limited Partnership to Acquire Mason Place Apartments, an Existing Project Under Chapter 121A of the General Laws of The Commonwealth of Massachusetts and Chapter 652 of the Acts of 1960, Each As Amended (the "Amended Report and Decision"); and

WHEREAS, the Mayor of the City approved the Authority's approval on February 2, 2004; 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 February 11, 2004; and

WHEREAS, in connection with such acquisition, the Original Owner is assigning to the Owner, and the Owner is assuming, that certain "Contract Required by Section 6A of Chapter 121A of the General Laws" dated September 18, 1978 by and between the Assignor and the City of Boston, as amended by "First Amendment to Contract between Mason Place Company and the City of Boston pursuant to Massachusetts General Laws c. 121A, s. 6A" dated January 31, 2001 (as so amended, the "6A Contract") pursuant to an Assignment and Assumption of 6A Contract effective as of the Effective Date.



NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree, effective on the date the Owner acquires the Project from the Original Owner (the "Effective Date"), as follows:

1. Section 1(d)(ii) of the 6A Contract is hereby deleted in its entirety and the following inserted in place thereof:

(ii) (A) With respect to calendar years 2004 through and including 2008, eight percent (8%) of residential income from the Project, as hereinafter defined, and twenty percent (20%) of the retail/commercial income of the Project

(B) With respect to calendar years 2009 through and including 2013, nine percent (9%) of residential income from the Project, as hereinafter defined, and twenty percent (20%) of the retail/commercial income of the Project; and

(C) With respect to calendar years 2014 through including last year or portion thereof during the term of this Contract, ten percent (10%) of residential income from the Project, as hereinafter defined, and twenty percent (20%) of the retail/commercial income of the Project.

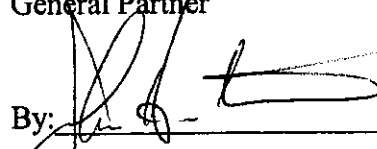
2. Section 9 of the 6A Contract is hereby amended by deleting the words "Mason Place Company" in the first and third lines thereof and inserting in place thereof the words "Mason RHF Limited Partnership."

3. Except to the extent amended hereby, the 6A Contract is hereby ratified and confirmed and shall remain in full force and effect.

EXECUTED under seal the day and year first above written.

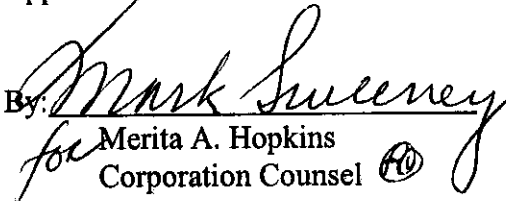

MASON RHF LIMITED PARTNERSHIP

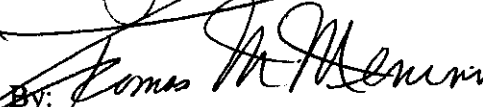
By: Mason Place RHF Housing, Inc.,  
General Partner

By:   
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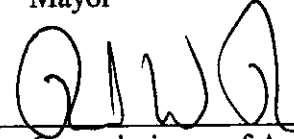
CITY OF BOSTON

Approved as to form:

By:   
for Merita A. Hopkins  
Corporation Counsel 

By:   
\_\_\_\_\_

Mayor

By:   
\_\_\_\_\_

Commissioner of Assessing