

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

AGREEMENT made this 30th day of December, 1983, by and between COUNCIL OF ELDERS HOUSING CORPORATION, a corporation organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts with principal offices at 2055 Columbus Avenue, Roxbury, Massachusetts 02119, (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.

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 August 4, 1982 (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 involving construction and maintenance of a 17-story apartment building containing 144 units for elderly and handicapped persons and one manager's unit, said project being more particularly described in the Application (the "Project"); and

WHEREAS, the Authority approved the Project by a vote on November 3, 1983; and

WHEREAS, the Mayor of the City of Boston approved the aforementioned vote of the Authority on November 15, 1983; and

WHEREAS, the Certificate of Vote of the Authority and the approval of the Mayor of the City of Boston were filed with the office of the City Clerk on November 21, 1983;

NOW, THEREFORE:

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

a. The Owner shall carry out the Project by constructing, maintaining, and managing the same in accordance with the Application, the provisions of Massachusetts General Laws, Chapter 121A, as now in effect, the Rules and Regulations of the Authority, as now in effect, and the Minimum Standards for Financing, Construction, Maintenance and Management of the Project, all as set forth in the Report and Decision of the Authority approving the Project.

b. The Owner shall 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. The Owner shall pay to the Commonwealth of Massachusetts with respect to each year that this Agreement is in full force and effect, the urban redevelopment excise tax required under Section 10 of said Chapter 121A.

d. The Owner shall pay to the City of Boston with respect to each of the calendar years this Agreement is in effect as hereinafter defined in Paragraph 8, next following the year the Project is subject to said Chapter 121A, the respective amount, if any, by which the amounts hereinafter set forth exceed the excise tax payable for such calendar year pursuant to Section 10 of said Chapter 121A.

(i) With respect to the period from initial loan closing on the Project until completion of the Project, as hereinafter defined, payments under this Agreement shall be the amount by which \$19,000 exceeds the aggregate of said excise taxes payable for such period.

For purposes of this Agreement, the phrase, "Completion of the Project" means certification of 100% completion from the appropriate funding source, or occupancy of 90% of the dwelling units in the Project, whichever occurs first.

(ii) For the remaining portion of the calendar year in which the Project is completed, the amount shall be \$94,333 times the number of full months in such remaining period, divided by 12.

(iii) Subject to the provisions of sub-paragraph (v) below, the following shall be the amounts for each of the respective calendar years listed:

<u>Complete Calendar Year Following Completion</u>	<u>Amount for Such Year</u>
1st	\$ 94,333
2nd	\$103,766
3rd	\$114,143
4th	\$125,557
5th	\$138,113
6th	\$151,924

(iv) Subject to the provisions of sub-paragraph (v) below, commencing in the seventh complete calendar year next following completion of the Project, the amount shall be increased to twelve (12%) percent of gross residential income and in every third year thereafter, the percentage of gross residential income paid by the Owner shall be increased by one (1%) percent until the Project is paying a maximum of

(v) The Owner's obligation to make payment of any increased amount or percentage which results in an amount above \$94,333 shall be conditional upon approval and funding of a special rent adjustment by the United States Department of Housing and Urban Development ("HUD") governing the Section 8 rental assistance program, or any successor subsidy program thereto, which approval Owner hereby undertakes to make its best efforts to secure.

(vi) Notwithstanding the above, subsequent to the first calendar year in which the Owner shall have paid \$94,333, if HUD shall not have approved and funded any percentage increase of residential income payable by the Owner in excess of \$94,333, Owner shall nevertheless pay to the City so much of such increased percentage of residential income or amount as set forth above as the Project can sustain without suffering an operating loss.

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 the 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.

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

(vii) The Project includes no commercial space.

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

Any payments which may become due to the City of Boston on account of the provisions of this Section 1(d) shall be paid to the City of Boston on or before the first day of April of the year next

following the year with respect to which such payment is due. Any overpayment applicable to one calendar year shall, at the election of the City be either refunded or applied to reduce the payments due in the succeeding calendar years except that with respect to the last calendar year in which the Project shall 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 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 for any period during which this Agreement is in effect, whether assessed to Owner or to any predecessor in title of the Project.

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, the applicable amount stated in or computed in accordance with the preceding paragraphs of this Agreement shall be reduced by the amount of such additional excise or tax.

e. The Owner shall file with the Commissioner of Assessing, Collector-Treasurer's Office 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 Project.

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

2. If the Owner fails to submit the audited report required by Paragraph 1f, 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 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, relative to its payments under this Agreement, the Owner shall 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 shall pay and/or reimburse the City for all expenses incurred as a result of such withholding or misrepresentation.

3. The undersigned, Assessing Department of the City of Boston, pursuant to the authority conferred upon it by Section 10 of Chapter 121A of the General Laws, hereby determines that the following shall be the maximum fair cash value of the Project, and agrees that the values certified to the Department of Revenue and to the Owner pursuant to said Section 10 shall not exceed the maximum fair cash values herein set forth:

- a) The fair cash value of the project as of January 1, 1985 shall not exceed \$1,900,000.
- b) The fair cash value of the project as of January 1, 1986 shall not exceed \$6,200,000.
- c) The fair cash value of the project as of January 1, 1987 shall not exceed \$6,200,000.
- d) The fair cash value of the project as of January 1, 1988 shall not exceed \$6,200,000.
- e) The fair cash value of the project as of January 1, 1989 shall not exceed \$6,200,000.

The parties acknowledge that if the fair cash value of the Project has not yet been so determined, the Assessing Department of the City of Boston shall determine the fair cash value of the Project pursuant to Massachusetts General Laws, Chapter 121A, Section 10, without reference to any other provisions of this Agreement.

4. The obligations of the Owner under this Agreement are conditioned in all respects upon the issuance to it 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, the rules and regulations and standards prescribed by the Authority now applicable to the Project shall not affect the Project.

6. If the Owner or any mortgagee of the Project proposes, acting either under the provisions of the last paragraph of Section 11 or under Section 16A of said Chapter 121A, to transfer the Project to a different entity, this Agreement may, upon 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 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 Agreement and under said Chapter 121A and at that time shall be divested of all powers, rights and privileges conferred by this Agreement and said Chapter 121A.

7. 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 in office of interest, and assigns, except in the event a successor in interest elects under option (3) under the provisions of Section 16A of said Chapter 121A as now in effect.

8. The term of this Agreement shall be for a period that is coterminous with the U.S. Department of Housing and Urban Development's Section 8 Subsidy Program for the Project or any similar or successor subsidy program. In the event that the Project ceases to be subsidized under the said program, then this Agreement shall be amended to reflect this change.

9. No officer, director, member, employee or agent of Owner shall have any personal liability for the performance of the obligations of the Owner hereunder.

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

COUNCIL OF ELDERS HOUSING CORPORATION

By *Jessie A. Porter*
Its Special Assistant to
the Executive Director

CITY OF BOSTON

By *Kevin H. White*
Mayor

ASSENTED TO:

By *[Signature]*
Commissioner of Assessing

APPROVED AS TO FORM:

By *[Signature]*
Corporation Counsel

RECEIVED
CITY CLERK'S OFFICE
2004 SEP 24 PM 3:13
CONTRACT BETWEEN THE CITY OF BOSTON
AND COUNCIL OF ELDERS HOUSING CORPORATION
PURSUANT TO CHAPTER 121A, SECTION 6A
OF THE MASSACHUSETTS GENERAL LAWS BOSTON, MA

2875 Washington Street, Roxbury, MA

This contract (the "6A Contract") is made as of this 24th day of September 2004, under Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of The Commonwealth of Massachusetts, by and between COUNCIL OF ELDERS HOUSING CORPORATION, a Massachusetts corporation organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts (the "Owner"), and the CITY OF BOSTON, a municipal corporation of The Commonwealth of Massachusetts (the "City"), acting pursuant to General Laws Chapter 121A, Section 6A and 10 and every other power and authority.

WITNESSETH THAT:

WHEREAS, an application dated August 2, 1982 (the "Application") was filed on behalf of the Owner with the Boston Redevelopment Authority (the "Authority") under the provisions of Chapter 121A and Chapter 652 of the Acts of 1960, both as amended (collectively, "Chapter 121A") for approval of a project involving construction and maintenance of a 17-story apartment building containing 144 units for elderly and handicapped persons and one manager's unit, said project being more particularly described in the Application (the "Project"); and

WHEREAS, the Authority approved the Application by a vote on November 3, 1983, adopting a Report and Decision (the "Report and Decision"); and

WHEREAS, the Mayor of the City (the "Mayor") approved the aforementioned vote of the Authority on November 15, 1983; and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the Report and Decision were filed with the City Clerk of the City of Boston on November 21, 1983, and such approval became final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Authority approved the proposal by the Owner to refinance the existing Section 202 Loan from the United States Department of Housing and Urban Development secured by the Project with a Massachusetts Housing Finance Agency Loan in the amount of \$11,840,000 and to finance major improvements to the Project (the "Refinancing") by a vote on September 9, 2004; and

WHEREAS, the Mayor approved the aforementioned vote of the Authority regarding the Refinancing on September 13, 2004; and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the Refinancing were filed with the City Clerk of the City of Boston on September 16, 2004, and such approval became final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, as a condition of the Authority's approval the Owner is required to enter into a new contract with the City pursuant to Section 6A of Chapter 121A; and

WHEREAS, this 6A Contract represents the understanding and agreement of the Owner and the City, and all prior 6A contracts between the Owner and the City are hereby declared null and void and shall have no further effect as of the date of this 6A Contract.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Operation of the Project.** The Owner shall carry out the Project in accordance with all Requirements, as they may be amended from time to time.

2. **Term.** This 6A Contract shall become binding on the parties on the Effective Date and shall terminate on November 21, 2023, forty (40) years from the date the 1983 Report and Decision became final and binding pursuant to the provisions of Chapter 121A .

3. **Excise Tax.** The Owner shall pay to the Department of Revenue, or any successor department or agency of The Commonwealth of Massachusetts ("DOR"), with respect to each calendar year that this 6A Contract is in effect, the Urban Redevelopment excise tax required under Chapter 121A, Section 10, as amended from time to time (the "Excise Tax"). Every calendar year the Owner shall provide (or cause its mortgagee to provide) to the City copies of cancelled check(s) sent to the DOR that related to the Excise Tax.

4. **6A Contract Payment.**

a. **6A Contract Payment.** The amount of the 6A Contract Payment shall be equal to the amount set forth below (the "6A Contract Payment") less the Excise Tax actually paid to DOR.

- (i) Calendar Years 2004 and 2005: Five (5%) percent of Gross Residential Income;
- (ii) Calendar Year 2006: Six (6%) percent of Gross Residential Income;
- (iii) Calendar Year 2007: Six and one-half (6 1/2%) percent of Gross Residential Income;
- (iv) Calendar Year 2008: Seven (7%) percent of Gross Residential Income;
- (v) Calendar Year 2009: Seven and one-half (7 1/2%) percent of Gross Residential Income;
- (vi) Calendar Year 2010: Eight (8%) percent of Gross Residential Income;

- (vii) Calendar Year 2011: Eight and one-half (8 1/2%) percent of Gross Residential Income; and
- (viii) Calendar Years 2012 through November 21, 2023: Nine (9%) percent of Gross Residential.

5. **Gap Payments.** Upon the termination of this 6A Contract the Owner shall pay or cause to be paid a gap payment to cover the time period between the termination date and the date the Project becomes taxable pursuant to Massachusetts General Laws, Chapter 59. Such payment shall be equal to the Base Amount that would have been made for such period if the Project had remained subject to this 6A Contract. Such payment shall be made within six (6) months following the month in which the 6A Contract terminates. Upon termination of this 6A Contract, the Project 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 6A Contract as provided in Chapter 121A; provided, however, the deviations and permissions granted by the Authority pursuant to the Original Report and Decision shall survive such termination and shall remain in effect.

6. **Overpayments.** Any Overpayment shall, at the election of the City, be refunded to the Owner or applied to reduce the 6A Contract Payment due in the succeeding calendar year or calendar years until such Overpayment has been exhausted. The Owner shall give notice to the City of the discovery of the alleged Overpayment within sixty (60) days of the date the 6A Contract Payment was made. The notice shall be accompanied by supporting documentation, including but not limited to, ward and parcel number, the date payment was made to the DOR and/or to the City, the amount of the 6A Contract Payment and the Excise Tax paid, and copies of both sides of all relevant cancelled checks.

Notwithstanding the foregoing, the City shall not be obligated to refund any Overpayment and/or grant any credit for interest, late fees, penalties or fines that may have been assessed if such Overpayment was due to either the Owner's failure to provide the financial information required by this 6A Contract or to the Owner's intentional provision of misleading financial information.

7. **Delivery and Examination of Financial Statements.** The Owner shall deliver in the manner provided in this Section 7, the following financial documents:

- a. To the Commissioner and the Authority, no later than February 10 following the end of each calendar year during the Term, (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 and the Collector-Treasurer on or before April 1 of each calendar year during the Term is in effect, (i) a Declaration of Liability Form (available from the Collector-Treasurer), (ii) an audited report, prepared by an independent Certified Public Accountant, consisting of a statement of Gross Residential Income, a statement of 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 Owner's Excise Tax Return as submitted to DOR.

The Owner hereby authorizes the Commissioner, or his or her representative designated in writing, to examine from time to time all Excise Tax returns and related documents or reports filed with DOR by the Owner or its representative. No further evidence of this authorization is required.

8. **Determination of Fair Cash Value.** The Assessing Department hereby determines, in accordance with the seventh paragraph of Section 10 of Chapter 121A, that the fair cash value of the real and personal property constituting the Project, as of each January 1 following the Effective Date through and including January 1 of the year next following the year in which the Owner's property tax exemption under Chapter 121A shall expire or terminate, shall be an amount which, when used in the computation of the Excise Tax for or with respect to the previous calendar year, would result in an Excise Tax not greater than the 6A Contract Payment 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 the Owner on or before March 1 of each year during such periods, pursuant to the second paragraph of Section 10 of Chapter 121A. Notwithstanding the foregoing, if the Owner does not file with the Commissioner the required financial information as set forth in Section 7 above, the Assessing Department, at the sole discretion of the Commissioner, may determine "fair cash value" without regard to the limitations described herein.

9. **Amendments to Chapter 121A or Rules and Regulations.** Notwithstanding any language to the contrary in the Transfer Application or any other document entered into between the Authority and the Owner, no amendment or modification of the terms and conditions of this 6A Contract shall be binding on the City without the prior written consent of the City. The City and the Owner further agree that without mutual consent, any amendment subsequent to the delivery of this 6A Contract of any of the provisions of Chapter 121A, as amended to date, or of the Rules, Regulations and Standards now applicable to the Project, shall not affect this 6A Contract.

10. **Collection and Enforcement.** Payments to the City of any and all amounts provided for in Section 4 shall be made by and through its Collector-Treasurer no later than the Due Date. The Owner's failure to pay when due all amounts provided for in Section 4 shall give the City the right to:

- a. Avail itself of the remedies provided for in Massachusetts General Laws, Chapter 60, as the same may be amended from time to time ("Chapter 60"); and/or
- b. Bring an action to recover unpaid 6A Contract Payments, plus any interest, fees or charges that may have accrued.

Payments to the City of any and all amounts due under Section 4 that are made beyond the Due Date shall bear interest at the rate provided for in Chapter 60.

11. **Costs To Be Paid by the Owner.** The Owner shall pay the following costs and expenses:

- a. The cost of having audited reports prepared by an independent Certified Public Accountant; and
- b. The cost of having audited reports prepared if the City has reasonable cause to be dissatisfied with the audited reports submitted by the Owner; and
- c. The reasonable costs and expenses, including attorneys' fees, incurred by the City in (i) defending this 6A Contract against challenges brought by the Owner, or (ii) enforcing this 6A Contract in actions brought by the City, provided that the City prevails in such an enforcement action. The City shall have the right to choose legal counsel, with the approval of the Owner, which approval shall not be unreasonably withheld, denied, delayed, or conditioned.

12. Successors/Assigns.

- a. This 6A 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 6A Contract (which changes may include, but are not be limited to, such modifications as the Commissioner may deem appropriate) if, in the determination of the Commissioner, the tax benefits afforded the Owner can be modified without putting the Project at risk. The Commissioner shall have the right to request financial information, including but not limited to, Operating Pro-Forma projections for the Project, Feasibility Studies, Hold/Sell analysis conducted by either buyer or seller, any appraisals conducted by either the buyer or seller. The City shall have the aforementioned right only if there is a Sale/Transfer of the Project.
- b. If, after due consideration of the information provided pursuant to Section 7, the City determines that the viability of the Project is still dependent on maintaining the 6A Contract Payment as specified in Section 4, the Owner's successor or assign shall be entitled to the same terms and conditions of this 6A Contract. The successor or assign shall derive the benefits only for the time remaining in the 6A Contract.
- c. If the City determines that the viability of the Project is not dependent on the benefits afforded by this 6A Contract, the Owner's successor or assign shall be required to enter into good faith negotiations to establish a new 6A contract payment amount. The failure of the Owner's successor or assign to enter into such good faith negotiations shall give the Commissioner the right to unilaterally determine the percentage to be used in calculating the 6A Contract Payment required to be paid pursuant to Section 4.
- d. The Owner shall have the burden of notifying the City of the intended Sale/Transfer. The City shall have thirty (30) business days within which to respond, provided the Owner shall have supplied pertinent Sale/Transfer information with its notice. If the City must request additional Sale/Transfer

information, the thirty (30) business days shall commence upon the City receiving all pertinent Sale/Transfer information.

13. **Notices.** All notices required pursuant to this 6A 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 the Owner: Council of Elders Housing Corporation
c/o Rogerson Communities Management
One Florence Street
Boston, MA 02131
Attn: President

With a copy to: Willie J. Washington, Esq.
Choate Hall & Stewart
53 State Street
Boston, MA 02109

A different address may be designated by either party by giving written notice to the other party. Any such notice shall be deemed given when so delivered by hand or, if mailed, two (2) days after such notice is deposited with the U.S. Postal Service.

14. **Pre-Conditions to Obligations of the Owner.** The obligations of the Owner under this 6A Contract are conditioned in all respects upon the Project being exempt from taxation under Section 10 of Chapter 121A.

15. **Invalidity.** If any provision of this 6A Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this 6A Contract and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

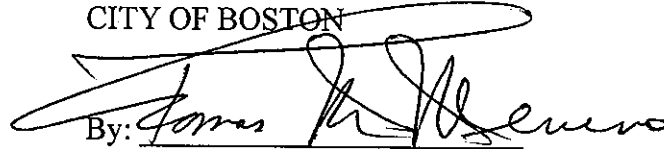
16. **Counterparts.** This 6A Contract may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

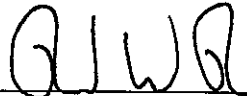
17. **Governing Law.** Notwithstanding anything to the contrary, this 6A Contract shall be governed by the laws of the Commonwealth of Massachusetts and any suit, claim or action shall be brought in Suffolk County.

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, the Contract.

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

CITY OF BOSTON

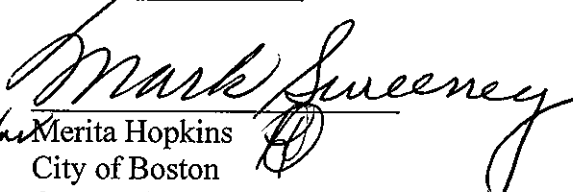
By: 
Thomas M. Menino, Mayor

By: 
Ronald W. Rakow,
Commissioner of Assessing

COUNCIL OF ELDERS CORPORATION, a
Massachusetts Corporation

By:  9/22/04
Marian G. Spencer, President

APPROVED AS TO FORM:

By: 
for Merita Hopkins
City of Boston
Corporation Counsel

AMENDED AND RESTATED CONTRACT BETWEEN THE CITY OF BOSTON,
COUNCIL TOWER LIMITED PARTNERSHIP AND COUNCIL OF ELDERS HOUSING
CORPORATION
PURSUANT TO CHAPTER 121A, SECTION 6A
OF THE MASSACHUSETTS GENERAL LAWS

LOT A
2875 Washington Street, Roxbury, MA

This amended and restated contract (the “6A Contract”) is made as of this 30th day of November and effective as of the 19th day of October, 2021 (the “Effective Date”), under Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of The Commonwealth of Massachusetts, by and between COUNCIL OF ELDERS HOUSING CORPORATION, a Massachusetts corporation organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts (the “Transferor”), COUNCIL TOWER LIMITED PARTNERSHIP, a Massachusetts limited partnership (the “Owner”) and the CITY OF BOSTON, a municipal corporation of The Commonwealth of Massachusetts (the “City”), acting pursuant to General Laws Chapter 121A, Section 6A and 10 and every other power and authority.

WITNESSETH THAT:

WHEREAS, an application dated August 2, 1982 (the “Application”) was filed on behalf of the Transferor with the Boston Redevelopment Authority (the “Authority”) under the provisions of Chapter 121A and Chapter 652 of the Acts of 1960, both as amended (collectively, “Chapter 121A”) for approval of a project involving construction and maintenance of a 17-story apartment building containing 144 units for elderly and handicapped persons and one manager’s unit, said project being more particularly described in the Application (the “Project”); and

WHEREAS, the Authority approved the Application by a vote on November 3, 1983, adopting a Report and Decision (the “Report and Decision”); and

WHEREAS, the Mayor of the City (the “Mayor”) approved the aforementioned vote of the Authority on November 15, 1983; and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the Report and Decision were filed with the City Clerk of the City of Boston on November 21, 1983, and such approval became final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Authority approved the proposal by the Transferor to refinance the existing Section 202 Loan from the United States Department of Housing and Urban Development secured by the Project with a Massachusetts Housing Finance Agency Loan in the amount of \$11,840,000 and to finance major improvements to the Project (the “Refinancing”) by a vote on September 9, 2004; and

WHEREAS, the Mayor approved the aforementioned vote of the Authority regarding the Refinancing on September 13, 2004; and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the Refinancing were filed with the City Clerk of the City of Boston on September 16, 2004, and such approval became final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, as a condition of the Authority's approval, the Transferor and the City entered into a contract pursuant to Section 6A of Chapter 121A on September 24 2004 (the "Original 6A Contract"); and

WHEREAS, Transferor has subdivided the real estate to which the Original 6A Contract applied (the "Original Project Site") into "Lot A" (on which the Project is located) and "Lot B" (which is vacant land), as shown on that certain "Plan of Land, 2863 Washington Street, Boston (Roxbury District) Mass", prepared by Feldman Land Surveyors, dated October 20, 2020, and recorded with the Suffolk County Registry of Deeds as Plan No. 430 of 2020; and

WHEREAS, Owner is an affiliate of Transferor, and on or about the date hereof, Transferor intends to transfer Lot A to Owner (on which the Project is located); and

WHEREAS, Transferor expects to retain Lot B and is entering into a separate contract with the City pursuant to Section 6A of Chapter 121A as to Lot B (which is vacant land); and

WHEREAS, the parties hereto wish to amend and restate the Original 6A Contract to reflect the change in the ownership and the change to the subject land; and

WHEREAS, this 6A Contract represents the understanding and agreement of the Owner, Transferor and the City with respect to Lot A, and except for the 6A Contract dated on or about the date hereof between the City and the Transferor with respect to Lot B, all prior 6A contracts between the Transferor and the City are hereby declared null and void and shall have no further effect as of the date of this 6A Contract.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Operation of the Project.** The Owner shall carry out the Project in accordance with all Requirements, as they may be amended from time to time.
2. **Term.** This 6A Contract shall become binding on the parties on the Effective Date and shall terminate on November 21, 2023, forty (40) years from the date the 1983 Report and Decision became final and binding pursuant to the provisions of Chapter 121A.
3. **Excise Tax.** The Owner shall pay to the Department of Revenue, or any successor department or agency of The Commonwealth of Massachusetts ("DOR"), with respect to each calendar year that this 6A Contract is in effect, the Urban Redevelopment excise tax required under Chapter 121A, Section 10, as amended from time to time (the "Excise Tax"). Every calendar year the Owner shall provide (or cause its mortgagee to provide) to the City copies of cancelled check(s) sent to the DOR that related to the Excise Tax.
4. **6A Contract Payment.**

- a. 6A Contract Payment. The amount of the 6A Contract Payment shall be equal to the amount set forth below (the “6A Contract Payment”) less the Excise Tax actually paid to DOR.
- (i) Calendar Years 2004 and 2005: Five (5%) percent of Gross Residential Income from the Original Project Site;
 - (ii) Calendar Year 2006: Six (6%) percent of Gross Residential Income from the Original Project Site;
 - (iii) Calendar Year 2007: Six and one-half (6½%) percent of Gross Residential Income from the Original Project Site;
 - (iv) Calendar Year 2008: Seven (7%) percent of Gross Residential Income from the Original Project Site;
 - (v) Calendar Year 2009: Seven and one-half (7½%) percent of Gross Residential Income from the Original Project Site;
 - (vi) Calendar Year 2010: Eight (8%) percent of Gross Residential Income from the Original Project Site;
 - (vii) Calendar Year 2011: Eight and one-half (8½%) percent of Gross Residential Income from the Original Project Site;
 - (viii) Calendar Years 2012 -2020: Nine (9%) percent of Gross Residential Income from the Original Project Site; and
 - (ix) Calendar Years 2021 through November 21, 2023: Until the conveyance of Lot A to the Owner, nine (9%) percent of the Gross Residential Income from the Original Project Site, and thereafter, the nine (9%) percent of Gross Residential Income from Lot A.
- b. Intentionally omitted.

5. **Gap Payments**. Upon the termination of this 6A Contract the Owner shall pay or cause to be paid a gap payment to cover the time period between the termination date and the date the Project becomes taxable pursuant to Massachusetts General Laws, Chapter 59. Such payment shall be equal to the 6A Contract Payment that would have been made for such period if the Project had remained subject to this 6A Contract. Such payment shall be made within six (6) months following the month in which the 6A Contract terminates. Upon termination of this 6A Contract, the Project 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 6A Contract as provided in Chapter 121A; provided, however, the deviations and permissions granted by the Authority pursuant to the Report and Decision and any amendments thereto shall survive such termination and shall remain in effect.

6. **Overpayments.** Any Overpayment shall, at the election of the City, be refunded to the Owner or applied to reduce the 6A Contract Payment due in the succeeding calendar year or calendar years until such Overpayment has been exhausted. The Owner shall give notice to the City of the discovery of the alleged Overpayment within sixty (60) days of the date the 6A Contract Payment was made. The notice shall be accompanied by supporting documentation, including but not limited to, ward and parcel number, the date payment was made to the DOR and/or to the City, the amount of the 6A Contract Payment and the Excise Tax paid, and copies of both sides of all relevant cancelled checks.

Notwithstanding the foregoing, the City shall not be obligated to refund any Overpayment and/or grant any credit for interest, late fees, penalties or fines that may have been assessed if such Overpayment was due to either the Owner's failure to provide the financial information required by this 6A Contract or to the Owner's intentional provision of misleading financial information.

7. **Delivery and Examination of Financial Statements.** The Owner shall deliver in the manner provided in this Section 7, the following financial documents:

- a. To the Commissioner and the Authority, no later than February 10 following the end of each calendar year during the Term, (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 and the Collector-Treasurer on or before April 1 of each calendar year during the Term is in effect, (i) a Declaration of Liability Form (available from the Collector-Treasurer), (ii) an audited report, prepared by an independent Certified Public Accountant, consisting of a statement of Gross Residential Income, a statement of 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 Owner's Excise Tax Return as submitted to DOR.

The Owner hereby authorizes the Commissioner, or his or her representative designated in writing, to examine from time to time all Excise Tax returns and related documents or reports filed with DOR by the Owner or its representative. No further evidence of this authorization is required.

8. **Determination of Fair Cash Value.** The Assessing Department hereby determines, in accordance with the seventh paragraph of Section 10 of Chapter 121A, that the fair cash value of the real and personal property constituting the Project, as of each January 1 following the Effective Date through and including January 1 of the year next following the year in which the Owner's property tax exemption under Chapter 121A shall expire or terminate, shall be an amount which, when used in the computation of the Excise Tax for or with respect to the previous calendar year, would result in an Excise Tax not greater than the 6A Contract Payment 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 the Owner on or before March 1 of each year during such periods, pursuant to the second paragraph of Section 10 of Chapter 121A. Notwithstanding the

foregoing, if the Owner does not file with the Commissioner the required financial information as set forth in Section 7 above, the Assessing Department, at the sole discretion of the Commissioner, may determine “fair cash value” without regard to the limitations described herein.

9. **Amendments to Chapter 121A or Rules and Regulations.** Notwithstanding any language to the contrary in the Transfer Application or any other document entered into between the Authority and the Owner, no amendment or modification of the terms and conditions of this 6A Contract shall be binding on the City without the prior written consent of the City. The City and the Owner further agree that without mutual consent, any amendment subsequent to the delivery of this 6A Contract of any of the provisions of Chapter 121A, as amended to date, or of the Rules, Regulations and Standards now applicable to the Project, shall not affect this 6A Contract.

10. **Collection and Enforcement.** Payments to the City of any and all amounts provided for in Section 4 shall be made by and through its Collector-Treasurer no later than the Due Date. The Owner’s failure to pay when due all amounts provided for in Section 4 shall give the City the right to:

- a. Avail itself of the remedies provided for in Massachusetts General Laws, Chapter 60, as the same may be amended from time to time (“Chapter 60”); and/or
- b. Bring an action to recover unpaid 6A Contract Payments, plus any interest, fees or charges that may have accrued.

Payments to the City of any and all amounts due under Section 4 that are made beyond the Due Date shall bear interest at the rate provided for in Chapter 60.

11. **Costs To Be Paid by the Owner.** The Owner shall pay the following costs and expenses:

- a. The cost of having audited reports prepared by an independent Certified Public Accountant; and
- b. The cost of having audited reports prepared if the City has reasonable cause to be dissatisfied with the audited reports submitted by the Owner; and
- c. The reasonable costs and expenses, including attorneys’ fees, incurred by the City in (i) defending this 6A Contract against challenges brought by the Owner, or (ii) enforcing this 6A Contract in actions brought by the City, provided that the City prevails in such an enforcement action. The City shall have the right to choose legal counsel, with the approval of the Owner, which approval shall not be unreasonably withheld, denied, delayed, or conditioned.

12. **Successors/Assigns.**

- a. This 6A 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 6A Contract (which changes may include, but are not be limited to, such modifications as the Commissioner may deem appropriate) if, in the determination of the Commissioner, the tax benefits afforded the Owner can be modified without putting the Project at risk. The Commissioner shall have the right to request financial information, including but not limited to, Operating Pro-Forma projections for the Project, Feasibility Studies, Hold/Sell analysis conducted by either buyer or seller, any appraisals conducted by either the buyer or seller. The City shall have the aforementioned right only if there is a Sale/Transfer of the Project.

- b. If, after due consideration of the information provided pursuant to Section 7, the City determines that the viability of the Project is still dependent on maintaining the 6A Contract Payment as specified in Section 4, the Owner's successor or assign shall be entitled to the same terms and conditions of this 6A Contract. The successor or assign shall derive the benefits only for the time remaining in the 6A Contract.
- c. If the City determines that the viability of the Project is not dependent on the benefits afforded by this 6A Contract, the Owner's successor or assign shall be required to enter into good faith negotiations to establish a new 6A contract payment amount. The failure of the Owner's successor or assign to enter into such good faith negotiations shall give the Commissioner the right to unilaterally determine the percentage to be used in calculating the 6A Contract Payment required to be paid pursuant to Section 4.
- d. The Owner shall have the burden of notifying the City of the intended Sale/Transfer. The City shall have thirty (30) business days within which to respond, provided the Owner shall have supplied pertinent Sale/Transfer information with its notice. If the City must request additional Sale/Transfer information, the thirty (30) business days shall commence upon the City receiving all pertinent Sale/Transfer information.

13. **Notices.** All notices required pursuant to this 6A 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 the Transferor: Council of Elders Housing Corporation
c/o Rogerson Communities Management
One Florence Street
Boston, MA 02131
Attn: President

With a copy to: Elizabeth Ross, Esq.
Krokidas & Bluestein LLP
600 Atlantic Avenue, 19th Floor
Boston, MA 02210

If to the Owner: Council Tower Limited Partnership
c/o Rogerson Communities Management
One Florence Street
Boston, MA 02131
Attn: President

With a copy to: Elizabeth Ross, Esq.
Krokidas & Bluestein LLP
600 Atlantic Avenue, 19th Floor
Boston, MA 02210

A different address may be designated by either party by giving written notice to the other party. Any such notice shall be deemed given when so delivered by hand or, if mailed, two (2) days after such notice is deposited with the U.S. Postal Service.

14. **Pre-Conditions to Obligations of the Owner.** The obligations of the Owner under this 6A Contract are conditioned in all respects upon the Project being exempt from taxation under Section 10 of Chapter 121A.

15. **Invalidity.** If any provision of this 6A Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this 6A Contract and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. **Counterparts.** This 6A Contract may be executed in counterparts, each of which when delivered shall be deemed an original, but such counterparts shall together constitute one and the same instrument.

17. **Governing Law.** Notwithstanding anything to the contrary, this 6A Contract shall be governed by the laws of the Commonwealth of Massachusetts and any suit, claim or action shall be brought in Suffolk County.

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, the Contract.

By: _____
_____,
Commissioner of Assessing

COUNCIL OF ELDERS CORPORATION, a
Massachusetts Nonprofit Corporation

By: Victoria L. Williams
Victoria L. Williams, Co-President

COUNCIL TOWER LIMITED PARTNERSHIP, a
Massachusetts limited partnership

By its General Partner, COUNCIL OF ELDERS
HOUSING CORPORATION, a Massachusetts
non-profit corporation

By: Victoria L. Williams
Victoria L. Williams, Co-President

APPROVED AS TO FORM:

By: _____
_____,
City of Boston
Corporation Counsel

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

COUNCIL OF ELDERS CORPORATION, a
Massachusetts Nonprofit Corporation

By: _____
Victoria L. Williams, Co-President

COUNCIL TOWER LIMITED PARTNERSHIP, a
Massachusetts limited partnership

By its General Partner, COUNCIL OF ELDERS
HOUSING CORPORATION, a Massachusetts
non-profit corporation

By: _____
Victoria L. Williams, Co-President

CITY OF BOSTON

By: _____
Michelle Wu,
Mayor

By: _____
Nicholas P. Ariniello,
Commissioner of Assessing

APPROVED AS TO FORM:

By: _____
Adam Cederbaum,
Corporation Counsel, City of Boston

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