



OFFICE OF THE CITY CLERK

Rosaria Salerno
City Clerk

Room 601, Boston City Hall, Boston, Massachusetts 02201, 617-635-4600, Fax: 617-635-4658

September 7, 2010

To the City Council

Dear Councilors:

In compliance with the order passed by your Honorable Body December 6, 1976, this is to inform you that the following was filed by the Boston Redevelopment Authority with the City Clerk on August 24, 2010.

"Second Amended & Restated Contract between the City and Post Office Square Redevelopment Corporation Pursuant to Section 6A of Chapter 121A of the M.G.L."

Respectfully,

Rosaria Salerno
City Clerk

RS/pt

Second Amended and Restated
Contract Between the City of Boston
and
Post Office Square Redevelopment Corporation
Pursuant to Section 6A of Chapter 121A
of the Massachusetts General Laws

RECEIVED
CITY CLERK'S OFFICE
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BOSTON, MA

This Second Amended and Restated Agreement made as of the 23rd day of July, 2010, under Sections 6A, 10 and 15 of Chapter 121A of the General Laws of the Commonwealth of Massachusetts is by and between Post Office Square Redevelopment Corporation, a corporation formed under the laws of the Commonwealth of Massachusetts, (hereinafter called the "Corporation") and the City of Boston, a municipal corporation of the Commonwealth of Massachusetts (hereinafter called the "City").

WITNESSETH THAT:

WHEREAS, Friends of Post Office Square, Inc. caused to be filed with the Boston Redevelopment Authority (the "Authority") an application dated November 14, 1984 (such application, as amended as described below, is hereinafter called the "Application") under the provisions of said Chapter 121A of the General Laws and of Chapter 652 of the Acts of 1960, as amended (collectively, "Chapter 121A"), for consent to form the Corporation and for approval of a project (the "Project"), more particularly described in the Application, consisting of the construction of an underground parking garage and grade level urban open space (the "Redevelopment Improvements") in the Project Area (as defined in the Application); and

WHEREAS, the Authority approved the Project and consented to the formation of the Corporation by vote as described in its report and decision on the Application dated May 10, 1984 (such report and decision, as amended as described below, is hereinafter called the "Report and Decision"); and

WHEREAS, the Mayor of the City approved the Authority's approval on October 4, 1984; 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 January 17, 1986 and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Corporation was formed by filing its Articles of Organization and a certificate of the Authority evidencing such approval and consent in the Office of the Secretary of the Commonwealth of Massachusetts on January 23, 1986, in accordance with the provisions of Chapter 121A; and

WHEREAS, the Authority approved a First Amendment to the Application dated December 23, 1985, by vote on April 3, 1986, a Second Amendment to the Application dated October 17, 1986, by vote on October 22, 1986, a Third Amendment to the Application dated May 20, 1988, by vote on June 9, 1988, a Fourth Amendment to the Application dated August 15, 1990, by a vote on August 29, 1990, a Fifth Amendment to the Application dated as of July 1, 2010, by a vote on July 20, 2010, and issued such approvals by amending the Report and

Decision through a First Amendment to the Report and Decision dated April 3, 1986, a Second Amendment to the Report and Decision dated October 22, 1986, a Third Amendment to the Report and Decision dated June 9, 1988, a Fourth Amendment to the Report and Decision dated August 29, 1990, a Fifth Amendment to the Report and Decision dated June 28, 1998, and a Sixth Amendment to the Report and Decision dated July 20, 2010; and

WHEREAS, the Mayor of the City approved the Authority's approval of the First Amendment to the Report and Decision on June 5, 1986, the Authority's approval of the Second Amendment to the Report and Decision on November 7, 1986, the Authority's approval of the Third Amendment to the Report and Decision on June 28, 1988, the Fourth Amendment to the Report and Decision on August 29, 1990, the Fifth Amendment to the Report and Decision on June 26, 1998, and the Sixth Amendment to the Report and Decision on July 21, 2010. The vote of the Authority and the approval of the Mayor with respect to the First, Second, Third, Fourth and Fifth Amendments to the Report and Decision were filed with the office of the City Clerk on June 6, 1986, November 7, 1986, June 28, 1988, August 30, 1990, June 26, 1998, and July 23, 2010 respectively; and

WHEREAS, the City and the Corporation entered into a Contract pursuant to G.L. c. 121A § 6A, dated January 29, 1986, with respect to the Project, which agreement was amended and restated by the First Amended and Restated Contract Between the City of Boston and the Corporation Pursuant to Section 6A of Chapter 121A of the Massachusetts General Laws on June 30th, 1988 to reflect changes required by the Third Amendment to the Application, which agreement is to be further amended and restated hereby to reflect changes required by the Fifth Amendment to the Application.

NOW, THEREFORE:

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

(a) To carry out the Project and cause the Project to be constructed, maintained and managed in accordance with the Application, the provisions of Chapter 121A of the General laws as now in effect, and of Chapter 652 of the Acts of 1960 as now in effect, the Minimum Standards for the Financing Construction, Maintenance and Management of the Project (the "Standards") set forth in the Report and Decision, the Development Agreement entered into by and among the Corporation, the City and the Authority (the "Development Agreement"), and any other agreement with the City and Authority, or either, relating to the Project, all of which are incorporated herein by reference.

(b) To pay to the Commonwealth of Massachusetts for each calendar year during which the Project is subject to Chapter 121A, the urban development excise required under Section 10 of 121A (the "Section 10 Payment").

(c) To pay to The Fund for Parks and Recreation in Boston created by instrument dated February 25, 1983 (the "Park Trust") beginning in calendar year 2010 and for so long as the Project is subject to Chapter 121A, an annual payment in the amount of \$100,000 (the "Parks Payment"), such payment to be made in semi-annual installments of \$50,000 each on the first day of May and November of each year (the payment due in May 2010 will be paid

within ten days after the effective date hereof). The obligation of the Corporation to make the Parks Payment shall be subordinate to the payment of required operating expenses and any required annual debt service payments on the Corporation's "Mortgage Indebtedness," which term shall include the current first mortgage and any additional indebtedness secured by a mortgage on the Corporation's interest in the Property.

(d) To pay to the collector of the City for deposit in the general fund of the City for each calendar year beginning in 2010 and continuing for so long as the Project is subject to Chapter 121A, an annual payment (the "City Dividend Payment") in an amount equal to twenty percent (20%) of the amount paid by the Corporation as dividends on its Class A Preferred Stock during such calendar year. The City Dividend Payment will apply to all dividends (whether characterized as current dividends or accrued dividends from prior periods) paid from Project revenues, but shall not apply to dividends paid in connection with a stock repurchase by the Corporation which has been approved by the Director of the Authority and the Commissioner of Assessing. The City Dividend Payment will be paid annually by March 1 following the applicable calendar year.

(e) Subject to the provisions and limitations of this Agreement, to pay with respect of each of the calendar years during which the Project is subject to Chapter 121A and during which the Corporation or its lessee operates the garage portion of the Project, the Net Proceeds of the Project computed as hereinafter set forth (the "Net Proceeds") for the year preceding the year in which such payment is due. Net Proceeds shall be defined as:

(i) the gross income of the Corporation, which for purposes of this Agreement and Section 10 of Chapter 121A shall be all income of the Corporation actually received in any calendar year (which shall not include the proceeds of any refinancing); less

(ii) (a) the cost of maintenance of the open space portion of the Project; (b) the cost of maintenance of Angell Memorial Plaza pursuant to an Operating and Maintenance Agreement between the Corporation and the Boston Parks Department; (c) the cost of debt service (including payments of principal, interest, costs or other charges, and payments to reserves for any of the same, and, in the event of a foreclosure, deed in lieu of foreclosure, or any other action taken by a mortgagee of the Project on account of the Corporation's failure to pay its debts when due, to repay amounts equal to any costs incurred in connection with such action and funds invested by such mortgagee or its successor as equity, and a commercially reasonable return on such investment, taking into account such foreclosure or other action and the facts existing at the time of such investment) attributable to debt financing for the Project entered into by the Corporation pursuant to a financing plan approved by the Authority; (d) the Parks Payment defined in Section 1(c) above; (e) the City Dividend Payment defined in Section 1(d) above; (f) dividends payable in connection with preferred stock issued by the Corporation pursuant to any financing plan approved by the Authority, and payments to reserves for the accrual of dividends or redemption of such preferred stock; (g) all operating expenses for the Project, including repairs, capital improvements, and payments to reserves for repairs or capital improvements as may be required by any first mortgage lender or approved by the Authority and the Commissioner of Assessing in any financing plan or otherwise; (h) in the year in which the garage reverts to the City, payments to redeem in whole or in part the common stock of the Corporation, at a price not to exceed the price paid for such stock; and (i) all taxes or other costs

levied by any state, local or federal governmental authority (including obligations pursuant to G.L. c. 121A, §10) and payable by the Corporation with respect to such year or payable with respect to a prior year and paid in such year (provided that such amounts have not previously been applied to reduce Net Proceeds). The Corporation agrees that it will make all reasonable efforts to notify the City of the amount of all such taxes and other costs and to minimize the amount of such payments, which efforts will include contesting the amount of such payments, if appropriate.

(f) To cause to be filed with the Assessing Department of the City of Boston (the "Assessing Department") within ninety (90) 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 amount invested in the construction of the Project.

(g) To file with the Assessing Department within ninety (90) days of the end of each calendar year during which this Agreement is in effect an audited report with respect to the Corporation, prepared by an independent Certified Public Accountant, consisting of a statement of profit and loss, a balance sheet, a statement of receipts and disbursements for the preceding calendar year, and a certified copy of the Corporation's urban redevelopment excise tax return as submitted to the Department of Revenue. At the request of the Assessors, the Corporation shall deliver to the Assessors such additional information concerning the operation of the Project and the finances of the Corporation as the Assessors may from time to time require.

(h) To submit to the Commissioner of Assessing or a designated representative written authorization to examine all urban redevelopment excise tax returns and attachments thereto filed by the Corporation with the Department of Revenue.

2. Any amount payable under Paragraph 1(e) hereof shall be paid in accordance with the following schedule:

(a) To the extent that such payment in any calendar year is equal to or less than Three Hundred Thousand Dollars (\$300,000.00), twenty percent (20%) of such payment shall be paid to the collector of the City for deposit in the general fund of the City, and eighty percent (80%) of such payment shall be paid as a gift or grant to the Park Trust.

(b) To the extent that such payment in any calendar year exceeds Three Hundred Thousand Dollars (\$300,000.00), eighty percent (80%) of such excess shall be paid to the collector of the City for deposit in the general fund of the City, and twenty percent (20%) of such excess shall be paid to the Park Trust.

(c) In the event that the Park Trust is terminated, or if under applicable law payment hereunder cannot be made to it, payments required to be made to the Park Trust under this Agreement shall be made in accordance with an amendment to this Agreement or, during any period in which there is not such amendment providing for the disposition of such funds, to the collector of the City.

3. Except as otherwise herein provided, any payment which may become due to the City with respect to any calendar year pursuant to the provisions of this Agreement shall be paid

in or within thirty days from the date of filing of the Corporation's urban redevelopment excise return with the Commonwealth of Massachusetts with respect to such calendar year.

4. The obligations of the Corporation under this Agreement and the Application are conditioned in all respects upon the receipt of all necessary approvals under Chapter 121A and acquisition by the Corporation of the real property on which the Project is to be constructed.

5. The Authority has extended the fifteen-year period of exemption from taxation for the Project to forty years under the provisions of Chapter 121A, Section 10, which period of tax exemption will run from July 23, 2010 (the date of filing of the Report and Decision on the Fifth Amendment to the Application).

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

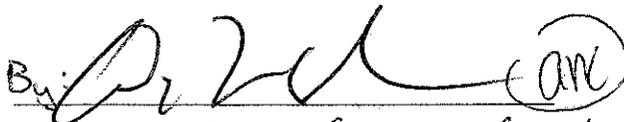
7. Subject to the provisions of Chapter 121A, the provisions of this Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns.

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

CITY OF BOSTON

Approved as to form:

By: 
Mayor

By: 
City of Boston Corporation Counsel

By: 
Commissioner of Assessing

POST OFFICE SQUARE
REDEVELOPMENT CORPORATION

By: 
President

FRIENDS OF POST OFFICE SQUARE, INC.
POST OFFICE SQUARE REDEVELOPMENT CORPORATION

CLERK'S CERTIFICATE

July 26, 2010

I, the undersigned, do hereby certify that I am the Clerk of the Post Office Square Redevelopment Corporation, a Massachusetts corporation (the "**Corporation**"), that I am authorized to execute and deliver this Certificate on behalf of the Corporation, and further certify as follows:

a. Attached as Exhibit A hereto is a true and complete copy of the Amended and Restated Bylaws of the Corporation and such Bylaws have not been rescinded, modified or amended and are in full force and effect on the date hereof.

b. At a Special Meeting of the Board of Directors duly called and held on Jun 23, 2010, the Board of Directors adopted the following vote, which has not been revoked, amended or modified and is in full force and effect:

VOTED: To authorize the President or Treasurer of the Corporation, acting singly, to execute amendments to the agreements and public approvals under which the Corporation owns and operates the Garage at Post Office Square and the Norman B. Leventhal Park, to provide an extension of the MGL Chapter 121A term and the period of the corporation's ownership to 2050, substantially in accordance with the terms outlined in the Memorandum to Holders of Class A Preferred Stock dated June 16, 2010, attached hereto, or with such changes as may be approved by the Executive Committee, and take all other actions necessary to effectuate the proposed changes.

c. That William F. McCall, Jr. is the President of the Corporation and James V. Young is the Treasurer of the Corporation.

{Signature appears on following page}

IN WITNESS WHEREOF, I have executed this Clerk's Certificate on the date first above written.

A handwritten signature in cursive script, appearing to read "John E. Rattigan, Jr.", written over a horizontal line.

Name: John E. Rattigan, Jr.

Title: Clerk

EXHIBIT A

Amended and Restated By-Laws

See Attached.

AMENDED AND RESTATED

BY-LAWS

of

POST OFFICE SQUARE REDEVELOPMENT CORPORATION

ADOPTED NOVEMBER 17, 1993

ARTICLE I.

Meetings of Stockholders

Section 1. Place. Meetings of the stockholders shall be held at the principal office of the corporation in Massachusetts or at such other place as may be named in the notice.

Section 2. Annual Meetings. The annual meeting of the stockholders shall be held within six months after the end of the fiscal year of the corporation on such date and at such hour and place as the directors or an officer designated by the directors shall determine. In the event that no date for the annual meeting is established or such meeting has not been held on the date so determined, a special meeting in lieu of the annual meeting may be held with all of the force and effect of an annual meeting.

Section 3. Special Meetings. Special meetings of the stockholders may be called by the chairman of the board, the president or by the directors, and shall be called by the clerk or, in case of the death, absence, incapacity or refusal of the clerk, by any other officer, upon written application of one or more stockholders who hold at least one-tenth part in interest of the capital stock entitled to vote thereat.

Section 4. Notice. A written notice of the date, place and hour of all meetings of stockholders stating the purposes of the meeting shall be given by the clerk or an assistant clerk (or by any other officer who is entitled to call such a meeting) at least seven (7) days before the meeting to each stockholder entitled to vote thereat and to each stockholder who is entitled to such notice, by leaving such notice with him or at his residence or usual place of business, or by mailing it, postage prepaid, and addressed to such stockholder at his address as it appears in the records of the corporation. Whenever notice of a meeting is required to be given a stockholder under applicable law, the articles of organization or these by-laws, a written waiver thereof, executed before or after the meeting by such stockholder or his attorney thereunto authorized and filed with the records of the meeting, shall be deemed equivalent to such notice.

Section 5. Quorum. A majority in interest of all stock issued, outstanding and entitled to vote at a meeting shall constitute a quorum, but a smaller number may adjourn from time to time without further notice until a quorum is secured.

Section 6. Voting. Stockholders entitled to vote shall have one vote for each share of stock owned by them and a proportionate vote for each fractional share; provided that the corporation shall not directly or indirectly vote any share of its own stock, and provided further that stock shall not be voted if any installment of the subscription therefor has been duly demanded and is overdue and unpaid. Stockholders may vote in person or by proxy.

ARTICLE II.

Officers and Directors

Section 1. Enumeration. The corporation shall have a board of not less than three directors, except that whenever there shall be fewer than three stockholders, the number of directors may be less than three but in no event less than the number of stockholders. The number of directors shall be fixed at the annual meeting of stockholders, and may be changed at any special meeting, by vote of the stockholders having the right to vote in the election of directors; provided that the board of directors may be enlarged at any time by vote of a majority of the directors then in office. The officers of the corporation shall be a chairman of the board, a president, a treasurer, a clerk and such other officers as the directors may from time to time appoint.

Section 2. Qualifications. Directors and officers need not be stockholders. No officer need be a director. Two or more offices may be held by the same person. The clerk shall be a resident of Massachusetts.

Section 3. Election. The directors shall be elected at the annual meeting of the stockholders by such stockholders as have the right to vote thereon. The directors at their annual meeting in each year shall elect a chairman, a president, a treasurer and a clerk, and may at any time elect such other officers as they shall determine. Except as hereinafter provided, the directors, the chairman, the president, the treasurer and the clerk shall hold office until the next annual meeting of stockholders and

until their respective successors are elected and qualified.
Other officers shall serve at the pleasure of the directors.

Section 4. Removal. Directors may be removed from office at any time for cause by vote of a majority of the directors then in office, and with or without cause by vote of the holders of a majority of the shares entitled to vote in the election of directors. Officers elected or appointed by the directors may be removed from their respective offices with or without cause by vote of a majority of the directors then in office. A director or officer may be removed for cause only after a reasonable notice and opportunity to be heard before the body proposing to remove him.

Section 5. Resignation. Resignations by officers or directors shall be given in writing to the president, treasurer, clerk or directors.

Section 6. Vacancies. Continuing directors may act despite a vacancy or vacancies in the board and shall for this purpose be deemed to constitute the full board. Any vacancy in the board of directors, however occurring, including a vacancy resulting from the enlargement of the board, may be filled by the directors, unless previously filled by the stockholders entitled to vote in the election of directors. Vacancies in any other office may be filled by the directors.

ARTICLE III.

Meeting of the Directors

Section 1. Regular Meetings. Regular meetings of the directors may be held at such times and places within or without the Commonwealth of Massachusetts as the directors may fix. An

annual meeting of the directors shall be held in each year immediately after and at the place of the meeting at which the board is elected.

Section 2. Special Meetings. Special meetings of the directors may be held at such times and places within or without the Commonwealth of Massachusetts as may be determined by the directors, the chairman of the board or by the president.

Section 3. Notice. No notice need be given for a regular or annual meeting of the directors. Forty-eight hours' notice by mail, telegraph, telephone or word of mouth shall be given for a special meeting unless shorter notice is adequate under the circumstances. A notice or waiver of notice need not specify the purpose of any special meeting. Notice of a meeting need not be given to any director, if a written waiver of notice, executed by him before or after the meeting, is filed with the records of the meeting, or to any director who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him.

Section 4. Quorum. A majority of the directors then in office shall constitute a quorum, but a smaller number may adjourn finally or from time to time without further notice until a quorum is secured. If a quorum is present, a majority of the directors present may take any action on behalf of the board except to the extent that a larger number is required by law or the articles of organization or the by-laws.

ARTICLE IV.

Powers and Duties of Directors and Officers

Section 1. Directors. The business of the corporation shall be managed by the directors, who may exercise all such powers of the corporation as are not by law, by the articles of organization or by the by-laws required to be otherwise exercised. The directors may from time to time to the extent permitted by law delegate any of their powers to committees, officers, attorneys or agents of the corporation, subject to such limitations as the directors may impose.

Section 2. Chairman and President. The directors may appoint a chairman of the board who, unless otherwise determined by the directors, shall, when present, preside at all meetings of stockholders and of the directors and shall have such other powers and duties as customarily belong to the office of chairman of the board or as may be designated from time to time by the directors. The president shall be the chief executive officer of the corporation unless the directors designate another officer, in which event he shall, unless the directors otherwise determine, be the chief operating officer. The chief executive officer shall, subject to the direction of the directors, have general supervision and control of the business of the corporation. The chief executive officer shall preside at all meetings of stockholders and of the directors at which he is present and the chairman of the board is not present. The president and chief executive officer shall perform such other duties and shall have such other powers as the directors may designate from time to time.

Section 3. Vice Presidents. The vice presidents, if any, shall have such powers and duties as may be designated from time to time by the directors or by the president.

Section 4. Treasurer. Except as the directors shall otherwise determine, the treasurer shall be the chief financial and accounting officer of the corporation and shall have such other powers and duties as customarily belong to the office of treasurer or as may be designated from time to time by the directors or by the president.

Section 5. Clerk. The clerk shall record all proceedings of the stockholders and directors in a book or books to be kept therefor and shall have custody of the seal of the corporation.

Section 6. Other Officers. Other officers shall have such powers as may be designated from time to time by the directors.

ARTICLE V.

Committees

Section 1. Executive Committee. An Executive Committee of the board of directors shall be established consisting of not fewer than three directors. The Executive Committee may exercise all such powers of the corporation between meetings of the board of directors as are not by law, by the Articles of Organization or these by-laws required to be otherwise exercised. The Executive Committee may make rules for the conduct of its business, but unless otherwise provided by the board of directors or in such rules, its business shall be conducted as provided by these by-laws for the board of directors. All members of the Executive Committee shall be appointed by the chairman, subject to approval of the board of directors and shall hold office at

the pleasure of the board. The board of directors may abolish the Executive Committee at any time. The Executive Committee shall keep records of its meetings and shall report its actions to the board of directors at the meeting of the board of directors next following the taking of any such action. The board of directors shall have the power to rescind any action of the Executive Committee, but no such rescission shall have retroactive effect.

Section 2. Nominating Committee. The chairman of the board shall appoint a Nominating Committee of the corporation, consisting of not fewer than three directors. Such appointments shall be subject to the approval of the board. The Nominating Committee will consider and recommend individuals to serve as directors, chairman of the board, members of the Executive Committee and president, and shall act promptly to prepare such recommendations to avoid vacancies. The Nominating Committees shall undertake its work in accordance with any direction or limitations established by the board.

Section 3. Operations Committee. The chairman shall appoint an Operations Committee consisting of not fewer than three persons, who need not be directors of the corporation. The Operations Committee will review and monitor the operation of the park and garage, shall periodically report to the board and shall undertake such other assignments as may be directed by the board.

Section 4. Ad-hoc Committees. The chairman or the directors may establish temporary or ad-hoc committees as necessary or desirable. Additional permanent standing committees may be established from time to time by the board.

ARTICLE VI.

Employment Contracts

The corporation may enter into employment contracts authorized by the directors extending beyond the terms of the directors. An employment contract shall be valid despite any inconsistent provision of these by-laws relating to terms of officers and removal of officers with or without cause but shall not affect the authority of the directors to remove officers. Any removal or failure to reelect an officer shall be without prejudice to the officer's contract rights, if any.

ARTICLE VII.

Indemnification of Directors and Officers

The corporation shall, to the extent legally permissible, indemnify each person who may serve or who has served at any time as a director or officer of the corporation or of any of its subsidiaries, or who at the request of the corporation may serve or at any time has served as a director, officer or trustee of, or in a similar capacity with, another organization or an employee benefit plan, against all expenses and liabilities (including counsel fees, judgments, fines, excise taxes, penalties and amounts payable in settlements) reasonably incurred by or imposed upon such person in connection with any threatened, pending or completed action, suit or other proceeding, whether civil, criminal, administrative or investigative, in which he may become involved by reason of his serving or having served in such capacity (other than a proceeding voluntarily initiated by such person unless he is successful on the merits, the proceeding was authorized by the corporation or the proceeding seeks a

declaratory judgment regarding his own conduct); provided that no indemnification shall be provided for any such person with respect to any matter as to which he shall have been finally adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his action was in the best interests of the corporation or, to the extent such matter relates to service with respect to any employee benefit plan, in the best interests of the participants or beneficiaries of such employee benefit plan; and provided, further, that as to any matter disposed of by a compromise payment by such person, pursuant to a consent decree or otherwise, the payment and indemnification thereof have been approved by the corporation, which approval shall not unreasonably be withheld, or by a court of competent jurisdiction. Such indemnification shall include payment by the corporation of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person indemnified to repay such payment if he shall be adjudicated to be not entitled to indemnification under this article, which undertaking may be accepted without regard to the financial ability of such person to make repayment.

A person entitled to indemnification hereunder whose duties include service or responsibilities as a fiduciary with respect to a subsidiary or other organization shall be deemed to have acted in good faith in the reasonable belief that his action was in the best interests of the corporation if he acted in good faith in the reasonable belief that his action was in the best interests of such subsidiary or organization or of the

participants or beneficiaries of, or other persons with interests in, such subsidiary or organization to whom he had a fiduciary duty.

Where indemnification hereunder requires authorization or approval by the corporation, such authorization or approval shall be conclusively deemed to have been obtained, and in any case where a director of the corporation approves the payment of indemnification, such director shall be wholly protected, if:

(i) the payment has been approved or ratified (1) by a majority vote of a quorum of the directors consisting of persons who are not at that time parties to the proceeding, (2) by a majority vote of a committee of two or more directors who are not at that time parties to the proceeding and are selected for this purpose by the full board (in which selection directors who are parties may participate), or (3) by a majority vote of a quorum of the outstanding shares of stock of all classes entitled to vote for directors, voting as a single class, which quorum shall consist of stockholders who are not at that time parties to the proceeding; or

(ii) the action is taken in reliance upon the opinion of independent legal counsel (who may be counsel to the corporation) appointed for the purpose by vote of the directors or in the manner specified in clauses (1), (2) or (3) of subparagraph (i); or

(iii) the payment is approved by a court of competent jurisdiction; or

and other persons associated with constituent corporations that have been merged into or consolidated with the corporation who would have been entitled to indemnification hereunder had they served in such capacity with or at the request of the corporation.

The right of indemnification under this article shall be in addition to and not exclusive of all other rights to which such director or officer or other persons may be entitled. Nothing contained in this article shall affect any rights to indemnification to which corporation employees or agents other than directors and officers and other persons entitled to indemnification hereunder may be entitled by contract or otherwise under law.

ARTICLE VIII.

Stock and Transfer Books

The corporation shall keep in the Commonwealth of Massachusetts at its principal office (or at an office of its transfer agent or of its clerk or of its resident agent) stock and transfer records, which shall contain the names of all stockholders and the record address and the amount of stock held by each. The corporation for all purposes may conclusively presume that the registered holder of a stock certificate is the absolute owner of the shares represented thereby and that his record address is his proper address. The directors may fix in advance a time, which shall not be more than sixty days before the date of any meeting of stockholders or the date for the payment of any dividend or the making of any distribution to stockholders or the last day on which the consent or dissent of

stockholders may be effectively expressed for any purpose, as the record date for determining the stockholders having the right to notice of and to vote at such meeting and any adjournment thereof or the right to receive such dividend or distribution or the right to give such consent or dissent, and in such case only stockholders of record on such record date shall have such right, notwithstanding any transfer of stock on the books of the corporation after the record date; or without fixing such record date the directors may for any of such purposes close the transfer books for all or any part of such period.

If no record date is fixed and the transfer books are not closed:

(1) The record date for determining stockholders having the right to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given.

(2) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors acts with respect thereto.

ARTICLE IX.

Issue of Authorized Stock

Any unissued capital stock from time to time authorized under the articles of organization may be issued by vote of the directors.

ARTICLE X.

Signature of Checks

All checks drawn on bank accounts of the corporation may be signed on its behalf as authorized from time to time by the directors.

ARTICLE XI.

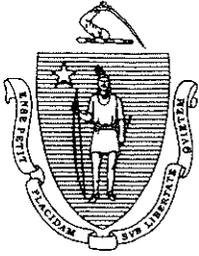
Seal and Fiscal Year

The seal shall be circular in form with the name of the corporation around the periphery and words and figures "Incorporated Post Office Square Redevelopment Corporation - 1986 Massachusetts" within. The fiscal year shall commence on January of each year.

ARTICLE XII.

Amendment of By-Laws

These by-laws may be amended, altered or repealed in whole or in part, and new by-laws may be adopted, by vote of the holders of a majority of the shares of common stock outstanding and entitled to vote.



The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the
Commonwealth

July 26, 2010

TO WHOM IT MAY CONCERN:

I hereby certify that according to the records of this office,

POST OFFICE SQUARE REDEVELOPMENT CORPORATION

is a domestic corporation organized on **January 23, 1986**, under the General Laws of the Commonwealth of Massachusetts.

I further certify that there are no proceedings presently pending under the Massachusetts General Laws Chapter 156D section 14.21 for said corporation's dissolution; that articles of dissolution have not been filed by said corporation; that, said corporation has filed all annual reports, and paid all fees with respect to such reports, and so far as appears of record said corporation has legal existence and is in good standing with this office.



In testimony of which,
I have hereunto affixed the
Great Seal of the Commonwealth
on the date first above written.

William Francis Galvin

Secretary of the Commonwealth

Background

The Post Office Square 121A (PO Square) project commenced in 1990 and is scheduled to terminate in 2030. The intention of the project was for the garage proceeds to maintain the park above, with any revenue above expenses, debt service, and dividends to preferred shareholders (who provided the equity necessary for the project) going to the City via the contract negotiated pursuant to Section 6A of Chapter 121A (6A Contract). A portion of those revenues are pledged to the Fund for Parks, a City of Boston Parks Department charitable fund.

While the park has been a huge success and the garage well managed, PO Square has not been as financially successful as was hoped. There has never been sufficient funds for any 6A Contract payment, although the garage has annually paid the City its required 121A tax payment pursuant to Section 10 of Chapter 121A (\$1.3 million in 2010). Preferred shareholders have also been disappointed, as dividend payments have been routinely deferred.

Proposal

There are a number of options for improving the financial performance of the garage, including refinancing debt and buying back preferred shares. The term remaining on the 121A restricts the financial options for the project, as it is difficult to secure or refinance debt for the limited term remaining.

The City has worked with PO Square on a plan to extend the 121A term. The plan includes the following components:

Term: Extend the 121A for an additional ²⁵~~20~~ ^{anc} years, until 2050.

Amended 6A agreement: A new provision will be added that provides the City with 20% of all dividend payments to preferred shareholders. This will ensure that as the financial performance of PO Square improves, the City will immediately share the benefits. The City will continue to receive all proceeds remaining after the payment of debt service, operating costs, and dividends.

Support for Parks: PO Square will make an annual payment of \$100k, adjusted for inflation, to the Fund for Parks. In addition, PO Square will take over the maintenance of Angell Memorial Plaza, a small park across Milk Street from PO Square (the City will retain ownership of this parcel).

Impact

The revisions enhance the financial rewards for both the City and PO Square. Based on current projections for the operations of the garage, the revisions in the 6A contract will yield an additional \$11.8 million for the City over the next 20 years. To the extent the additional term allows PO Square to successfully execute its plans to refinance debt and buyback shares, this amount will increase significantly.

The agreement also ensures that the successful public private partnership between City and PO Square will continue for an extended term.

total of 40 yrs after
BRT determination of
fundamental change.
OK