

Third Amended and Restated Memorandum of Agreement
for Resident Participation
in Boston Housing Authority-Affiliated Mixed Finance Developments

1. Parties

This Agreement (“Agreement”) is entered into on this 29th day of November, 2022 by and among Boston Housing Authority (“BHA”), Old Colony Phase One Limited Partnership (“Phase One Owner”), as the owner of Phase One (as hereinafter defined), Old Colony Phase Two A Limited Partnership (“Phase Two A Owner”), as the owner of Phase Two A (as hereinafter defined), Old Colony Phase Two B Limited Partnership (“Phase Two B Owner”), as the owner of Phase Two B (as hereinafter defined), Old Colony Phase Two C Limited Partnership (“Phase Two C Owner”) as the owner of Phase Two C (as hereinafter defined), Old Colony Phase Three A4 Limited Partnership (“Phase Three A4 Owner”), as an owner of a portion of Phase Three A (as hereinafter defined), Old Colony Phase Three A9 Limited Partnership (“Phase Three A9 Owner”, together with Phase One Owner, Phase Two A Owner, Phase Two B Owner, Phase Two C Owner, and Phase Three A4 Owner, the “Original Owners”), as an owner of a portion of Phase Three A (as hereinafter defined), Old Colony Phase Three B4 Limited Partnership (“Phase Three B4 Owner”), as an owner of a portion of Phase Three B (as hereinafter defined), Old Colony Phase Three B9 Limited Partnership (“Phase Three B9 Owner”), as an owner of a portion of Phase Three B, Old Colony Phase Three C Limited Partnership (“Phase Three C Owner”, together with Previous Owners, Phase Three B4 Owner, and Phase Three B9 Owner, the “Current Owners”), as an owner of Phase Three C (as hereinafter defined), Old Colony 4 Bonds Limited Partnership (“Phase Four Owner”), as the owner of Phase Four (as hereinafter defined), Old Colony 5 Bonds Limited Partnership (“Phase Five Owner,” together with Current Owners and Phase Four Owner, the “Owners”), as the owner of Phase Five (as hereinafter defined), and Old Colony Tenant Association, Inc., the recognized resident organization (“Resident Organization”) for each of the following developments having a management office located at 20 Reverend Burke Street, Boston, Massachusetts 02127:

- Old Colony Phase One, consisting of one hundred sixteen (116) apartments (“Phase One”);
- Old Colony Phase Two A, consisting of forty-five (45) apartments (“Phase Two A”);
- Old Colony Phase Two B, consisting of eighty-four (84) apartments (“Phase Two B”);
- Old Colony Phase Two C, consisting of forty (40) apartments (“Phase Two C”);
- Old Colony Phase Three A, consisting of one hundred thirty-five (135) apartments (“Phase Three A”);
- Old Colony Phase Three B, consisting of one hundred fifteen (115) apartments (“Phase Three B”);
- Old Colony Phase Three C, consisting of fifty-five (55) apartments (“Phase Three C”);
- Old Colony Phase Four, consisting of one hundred and four (104) apartments (“Phase Four”);
- Old Colony Phase Five, consisting of one hundred and five (105) apartments (“Phase Five”); and

The Owners, BHA and Resident Organization desire to amend and restate that certain Memorandum of Agreement for Resident Participation in Boston Housing Authority-Affiliated Mixed Finance Developments entered by and among the Previous Owners, BHA and Resident Organization dated October 2, 2017, as amended by that certain Amended and Restated Memorandum of Agreement for Resident Participation in Boston Housing Authority-Affiliated Mixed Finance Developments entered by and among the Previous Owners, BHA and Resident Organization dated August 8, 2019, on the terms and conditions hereof, as amended by that certain Second Amended and Restated Memorandum of Agreement for Resident Participation in Boston Housing Authority-Affiliated Mixed Finance Developments entered by and among the Current Owners, BHA and Resident Organization dated August 3, 2022.

The Owners shall ensure that any management companies engaged by Owners to manage the Development shall be responsible for Owners' obligations hereunder and shall implement the terms and conditions of this Agreement during the term of such company's management of the Development.

2. Term of Agreement

This Agreement shall be in effect for a one-year term and shall renew automatically for additional terms of one year each. This Agreement may be terminated by any party to this Agreement upon giving thirty (30) days prior written notice to the other parties.

3. Property Covered and Baseline Unit Count

The BHA and the Owners have redeveloped all or a portion of the Development. Prior to such redevelopment, the site of the Development consisted of eight hundred forty-five (845) apartments (the "Original Units"). After redevelopment, there will be seven hundred ninety-eight (798) apartments in the Development as set forth in Exhibit A. One hundred seventy-four (174) apartments continue to receive public housing operating subsidy from BHA from the U.S. Department of Housing and Urban Development ("HUD") and continue to be regarded as public housing ("ACC Units"). The ACC Units are also assisted under the federal and/or state Low Income Housing Tax Credit programs ("Tax Credit Programs"). Five hundred eighty-four (584) apartments are assisted by project-based Section 8 ("Section 8 Units"), of which twenty-eight (28) apartments are subject to the Rental Assistance Demonstration ("RAD") program ("RAD Units"). The Section 8 Units are also assisted under the Tax Credit Programs. Forty (40) apartments are assisted under the Tax Credit Programs, but with no particular subsidies set-aside for such units ("Tax Credit-Only Units").

If there will be future phases of redevelopment that may change the mix, Exhibit A will be revised to update this information and define the final mix and number of units.

4. Resident Organization Participation

The parties to this Agreement acknowledge that the existence and recognition of a viable, representative, and democratic resident organization is critical to the successful management of the Development. The Resident Organization agrees to be open to participation by, and to

represent the interests of, all residents of the Development. The Resident Organization shall in addition establish safeguards to ensure that the interests of all residents of the Development are fairly represented on the Resident Organization's governing board.

5. Public Housing Resident Participation Requirements to Be Carried Over After Redevelopment

Prior to redevelopment, the Development was subject to HUD resident participation requirements. These required that BHA:

- (a) encourage residents to form resident organizations;
- (b) recognize resident organizations which are democratically elected and meet HUD tenant participation regulations;
- (c) provide wheelchair-accessible office and tenant activity space, as available, free of charge, preferably within the Development such resident organizations represent, as well as telephone and facility support for resident organizations;
- (d) assist resident organizations with support needed for regular elections of a governing board (at least every three years);
- (e) provide funding for resident organizations consistent with HUD requirements; and
- (f) ensure that resident organizations, as well as individual residents, be kept informed of, and provided with an opportunity to participate in and comment on key decisions affecting residents.

It is the intent of the parties that such levels of assistance and participation continue after redevelopment, and not be affected by redevelopment. The Owners shall undertake such levels of assistance and participation in the manner and to the extent stated herein, and the BHA shall have no further obligation except as stated herein.

6. Modifications of BHA's Tenant Participation Policy

The parties acknowledge that the BHA has adopted a Public Housing Tenant Participation Policy (Approved 5-16-2007). To the extent that the terms of BHA's Tenant Participation Policy may not accord exactly with resident participation in mixed finance developments, BHA, the Owners, and the Resident Organization may agree to modifications of such terms in writing. In the event BHA's Tenant Participation Policy shall be subsequently amended by the BHA, the BHA shall provide the Owners and the Resident Organization with notice of such amendment, and the Owners and the Resident Organization shall have the right to modify or terminate this Agreement in light of any such amendments.

7. Resident Participation in contrast to Resident Services

It is understood that resident participation, including the obligations and the funding related thereto, is separate and distinct from resident services programming. Resident services programming is designed to foster opportunities for self-sufficiency, well-being, and economic improvement. Resident participation is designed to encourage and allow for meaningful resident

engagement in the overall mission and operation of housing. Both seek to create a positive living environment for residents.

The BHA, the Resident Organization, and the Owners shall review and evaluate, at least once every two years, resident services being provided by Owners to residents.

8. Budget and Funding for Resident Participation Activities

a. The yearly operating budget for the Development shall include funding for the Resident Organization. At a minimum, the funding for resident participation provided by the Owners to the Resident Organization shall be in such amount as would have been provided by the BHA had all of the Original Units listed been retained as affordable housing units under HUD requirements. For example, HUD regulations currently require a \$25 per unit annual set-aside (or, the applicable pro-ration if a PHA is less than 100% funded) of operating subsidy for resident participation activities. Collectively, the Owners shall annually provide \$25 per Original Unit (i.e., $845 \times \$25 = \$15,925$), with each Owner paying its pro rata share based on the number of units it owns in the Development as set forth in Exhibit A. The BHA shall notify the Owners each year of the per unit requirement.

b. The Owners shall condition release of such funding described in subsection 8(a) above to the Resident Organization on the Resident Organization's compliance with the terms normally applicable to resident organizations under applicable law and policy and consistent with reasonable rules and regulations of the Owners, including (i) limitation of expenses to eligible resident participation activities to the extent required under funding sources and (ii) accounting for resident participation funds spent. Funds shall be released to make advances to and reimburse the Resident Organization for expenditures based upon a budget provided from the Resident Organization and approved by the Owners at the start of each fiscal year. BHA shall provide periodic training and technical assistance to the Resident Organization and Owners regarding such terms.

9. Funding of Activities If There Is No Recognized Resident Organization

If, at the time of the signing of this Agreement, there is no resident organization recognized pursuant to Section 13 of this Agreement, BHA and the Owners agree that they will support the development of a resident organization and that when there is a recognized resident organization, all parties shall sign an addendum making the recognized resident organization a party to this agreement.

Notwithstanding the foregoing, if there is no recognized or conditionally recognized resident organization, then resident participation funding may be used as determined by the Owners for the following purposes: (a) resident participation activities, including, but not limited to, assistance in the formation or re-establishment of a resident organization, (b) activities related to the election of a governing board for the resident organization, (c) training and technical

assistance on issues of importance to residents, and (d) attendance by resident leaders at local, state, and national forums in order that they may bring back information to residents on current issues affecting residents and low-income housing programs.

Residents shall be free to present proposals to the Owners for the use of such funding, which the Owners shall have the right to review and approve in its reasonable discretion.

10. Accounting of Resident Participation Funds

Yearly, the Owners shall provide information to the BHA to account for resident participation spending and activities. At the start of its fiscal year, BHA shall also annually notify the Owners and the Resident Organization regarding the level of base line resident participation funding that shall be available based on HUD funding.

The Resident Organization shall deposit the funding described in sub-section 8(a) above that it receives only in an account in the name of the Resident Organization. It shall not deposit the resident participation funds in any other account, including but not limited to personal or business accounts of any member, officer or director of the Resident Organization, or any other person. It shall not use the name or taxpayer identification number of the Owners or the BHA in any accounts or records. The Resident Organization shall require that all expenditures be approved by two duly authorized governing board members or officers. The Resident Organization shall not open any account with a credit or debit card.

Notwithstanding any language to the contrary herein, including in Section 8, Section 9, and Section 10, the Phase Four Owner and the Phase Five Owner will not be required to provide resident participation funding until the apartments for Phase Four and Phase Five are at least 90% occupied.

11. Office Space and Facilities for Resident Organization

The Owners shall set aside space in the learning center of the Development for the Resident Organization to have an office free of charge where its governing board may meet. The Owners shall provide a telephone with free local service (provided such telephone is solely dedicated to the Resident Organization), if requested, and a computer with free internet access. Such space shall be handicapped accessible, to the extent appropriate handicapped accessible space is available.

If there is no recognized or conditionally recognized resident organization, Owners may make this space available for resident leaders upon request for legitimate purposes designed to foster resident participation. Owners shall provide information to the BHA, upon BHA's request, to account for such use of the space.

12. Space for Resident Meetings

The Owners shall make available sufficient space in or near the Development for resident community meetings free of charge and all space made available shall be handicapped accessible.

13. Recognition of Resident Organization

The Owners shall recognize resident organizations that are recognized or conditionally recognized by the BHA. The BHA shall be solely responsible to determine whether a previously recognized resident organization shall lose recognition, or be placed on conditional recognition. The parties agree that the Development shall not have more than one recognized resident organization at any time. If, at any time, the BHA determines that the Resident Organization shall lose recognition or conditional recognition, then the Resident Organization shall no longer have the benefits of this Agreement. If, at any time, the BHA determines that it shall recognize or conditionally recognize another resident organization for the Development as successor to the Resident Organization, then the parties shall work together in good faith to amend or replace this Agreement as appropriate.

14. Consultation with Residents and the Resident Organization

Owners shall consult with the Resident Organization regarding the same matters that are subject to resident organization consultation under public housing requirements or BHA policy, including: operating budgets, capital/modernization budgets and plans, safety/security, maintenance, management and changes in personnel/management, changes in the Development, use and scheduling of community rooms or facilities for programs for residents of the Development, and policy changes, including changes in the admissions or continued occupancy policy, the lease and grievance procedure, and the ways in which rent is determined.

The Owners shall engage in good faith discussions with the Resident Organization to resolve concerns and issues raised by residents.

Where HUD regulations or BHA policy requires notice and an opportunity for comment by public housing residents, the Owners shall also give such notice and opportunity for comment to the Resident Organization.

The Resident Organization may request to meet with appropriate staff from the Owners to discuss such matters, in addition to any rights of notice, comment, or consultation, and such a meeting shall be held within a reasonable period of time from such request.

If there is no recognized resident organization, the Owners shall still seek resident input on these matters and be willing to meet with residents on matters of resident concern.

15. Regular Meetings with the Resident Organization and Residents

Decision-making staff from Owners, or its manager, shall decide with the Resident Organization how often to meet with the governing board of the Resident Organization. Such meetings shall occur at least quarterly, and may occur more frequently if needed.

Decision-making staff from Owners, or its manager, shall also attend community-wide meetings to discuss matters of importance to residents. Such meetings shall occur at least annually, and may occur more frequently if needed.

Decision-making staff from the BHA shall also attend meetings of the governing board of the Resident Organization and community wide meetings, as requested.

Reasonable arrangements regarding advance notice, scheduling, and agenda topics shall be resolved among the parties.

If there is no recognized resident organization, the Owners, or its manager, shall have regular community-wide meetings and meetings with resident leaders, at least bi-annually or annually, to understand resident concerns and to assist in communication and understanding.

16. No Reprisal for Resident Organization Involvement

The parties acknowledge that it is unlawful to retaliate or engage in any reprisal against residents for their involvement in resident organizations or in resident organizing activities. It is expected that, from time to time, disagreements may arise between residents, the Owners, and/or the BHA about policies or matters affecting the Development, but such disagreements shall not affect residents' rights.

17. Dispute Resolution

Any disputes regarding resident participation funding, recognition, whether any party hereto has carried out its obligations under this Agreement and the BHA's Tenant Participation Policy, or other disputes that cannot be resolved between the Owners and the Resident Organization under this Agreement shall be submitted to the BHA Center for Community Engagement and Civil Rights for resolution.

18. Notices

Notices given pursuant to this Agreement shall be in writing, and shall be sent by (a) registered or certified mail, return receipt requested, with postage prepaid, (b) express mail or courier (next day delivery), or (c) personal delivery (receipt acknowledged in writing), addressed as follows:

If to the BHA: Boston Housing Authority
52 Chauncy Street, 11th Floor
Boston, MA 02111
Attention: Administrator

With a copy to: Boston Housing Authority
52 Chauncy Street, 10th Floor
Boston, MA 02111
Attention: General Counsel

If to any Owner: c/o Beacon Communities
Two Center Plaza, Suite 700
Boston, MA 02108
Attention: Dara Kovel

If to the Resident Organization: Old Colony Tenant Association, Inc.
125 Mercer Street
South Boston, MA 02127

With a copy to: Greater Boston Legal Services
197 Friend Street
Boston, MA 02114
Attention: Mac McCreight

19. Compliance with Laws

The parties shall comply with all applicable laws, regulations, and policies.

20. Governing Law; Jurisdiction

This Agreement shall be governed by and construed in accordance with United States and Massachusetts law. The federal and state courts located in Boston, Massachusetts, shall have jurisdiction to hear any dispute under this Agreement.

21. Legal Responsibility

Neither party shall be considered an agent of the other, involve the other in any contract, or incur any liability on behalf of the other except with the other party's explicit written assent. In no event shall either party be held liable as an employer, landlord, or grantor, or otherwise for any personal injury to or death of the other party's members, employees, agents, and/or representatives occasioned by or resulting from the other party's performance under this Agreement, including for purposes of workers' compensation. This provision shall survive termination of this Agreement.

22. No Implied Waiver

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

23. Amendments


This Agreement may be amended in writing at any time by the parties, as may be necessary to comply with applicable law or as otherwise mutually agreed upon by the parties.

[Signatures appear on following page.]

Executed as a sealed instrument as of the date first written above.

BHA:

BOSTON HOUSING AUTHORITY, a public body politic and corporate organized and existing under Chapter 121B of the General Laws of the Commonwealth of Massachusetts and Chapter 88 of the Acts of 1989

By: 

Kathryn Bennett, Administrator

RESIDENT ORGANIZATION:

OLD COLONY TENANT ASSOCIATION,
INC.

By: *Shelley M. Corbett*
Name: *Shelley M. Corbett*
Title: *OCTA President*

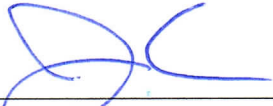
[Signature Page - Third Amended and Restated Memorandum of Agreement
for Resident Participation]

OWNERS:

OLD COLONY PHASE ONE LIMITED PARTNERSHIP

By: Beacon Old Colony, LLC, its
General Partner

By: Beacon Communities Corp., its
Managing Member


By: 

Joshua Cohen
President

OLD COLONY PHASE TWO A LIMITED PARTNERSHIP

By: Beacon Old Colony Phase Two A
LLC, its General Partner

By: Beacon Communities Corp., its
Managing Member

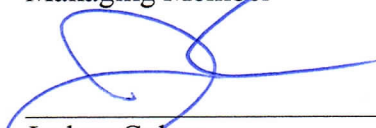
By: 

Joshua Cohen
President

OLD COLONY PHASE TWO B LIMITED PARTNERSHIP

By: Beacon Old Colony Phase Two B
LLC, its General Partner

By: Beacon Communities Corp., its
Managing Member

By: 

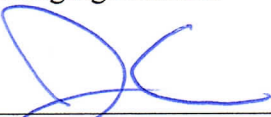
Joshua Cohen
President

[Signature Page - Third Amended and Restated Memorandum of Agreement
for Resident Participation]

**OLD COLONY PHASE TWO C
LIMITED PARTNERSHIP**

By: Beacon Old Colony Phase Two C
LLC, its General Partner

By: Beacon Communities Corp., its
Managing Member

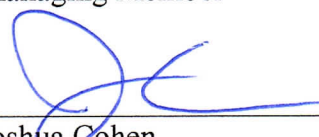
By: 

Joshua Cohen
President

**OLD COLONY PHASE THREE A4
LIMITED PARTNERSHIP**

By: Beacon Old Colony Phase Three A4
LLC, its General Partner

By: Beacon Communities Corp., its
Managing Member

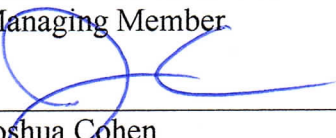
By: 

Joshua Cohen
President

**OLD COLONY PHASE THREE A9
LIMITED PARTNERSHIP**

By: Beacon Old Colony Phase Three A9
LLC, its General Partner

By: Beacon Communities Corp., its
Managing Member

By: 

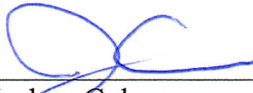
Joshua Cohen
President

[Signature Page - Third Amended and Restated Memorandum of Agreement
for Resident Participation]

**OLD COLONY PHASE THREE B4
LIMITED PARTNERSHIP**

By: Beacon Old Colony Phase Three B4
LLC, its General Partner

By: Beacon Communities Corp., its
Managing Member


By: 

Joshua Cohen
President

**OLD COLONY PHASE THREE B9
LIMITED PARTNERSHIP**

By: Beacon Old Colony Phase Three B9
LLC, its General Partner

By: Beacon Communities Corp., its
Managing Member


By: 

Joshua Cohen
President

**OLD COLONY PHASE THREE C
LIMITED PARTNERSHIP**

By: Beacon Old Colony Phase Three C
LLC, its General Partner

By: Beacon Communities Corp., its
Managing Member

By: 

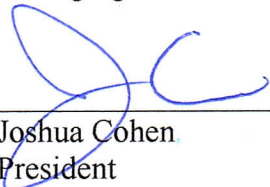
Joshua Cohen
President

[Signature Page - Third Amended and Restated Memorandum of Agreement
for Resident Participation]

**OLD COLONY 4 BONDS LIMITED
PARTNERSHIP**

By: Old Colony 4 Bonds GP LLC, its
General Partner

By: Beacon Communities Corp., its
Managing Member

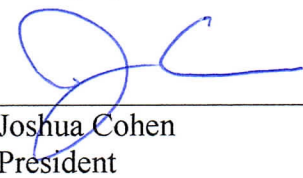
By: 

Joshua Cohen
President

**OLD COLONY 5 BONDS LIMITED
PARTNERSHIP**

By: Old Colony 5 Bonds GP LLC, its
General Partner

By: Beacon Communities Corp., its
Managing Member

By: 

Joshua Cohen
President

[Signature Page - Third Amended and Restated Memorandum of Agreement
for Resident Participation]

EXHIBIT A

Unit Mix

	Original ACC Units (before redevelopment)	ACC Units/Tax Credit Programs	Section 8 Units/ Tax Credit Programs	Tax Credit- Only Units	Total Units
Phase One	164	72	29	15	116
Phase Two A	58	27	11	7	45
Phase Two B	111	51	21	12	84
Phase Two C	54	24	10	6	40
Phase Three A	115	0	135	0	135
Phase Three B	94	0	115	0	115
Phase Three C	41	0	55	0	55
Phase Four	104	0	104	0	104
Phase Five	104	0	104	0	104
TOTAL	845	174	584	40	798