

Contract Between  
Commonwealth Flats Development 121 A Hotel Limited Partnership  
and the City of Boston  
Pursuant to Section 6A of Chapter 121A of the  
Massachusetts General Laws  
for the  
Hotel Project Phase

This contract (the "Contract") is made as of the 30 day of June, 1998, under Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of the Commonwealth of Massachusetts, is by and between Commonwealth Flats Development 121A Hotel Limited Partnership, a Massachusetts limited partnership (hereinafter referred to as the "Partnership") and the City of Boston, a municipal corporation of the Commonwealth of Massachusetts (hereinafter referred to as the "City"). Hotel Operating and Hotel Garage Operating are sometimes collectively referred to as the "Project Developers".

**WITNESSETH THAT:**

WHEREAS, Commonwealth Flats Development Limited Partnership, a Delaware limited partnership, on its own behalf and on behalf of the Partnership, Commonwealth Flats Development 121A East Limited Partnership ("CFD East"), and Commonwealth Flats Development 121A West Limited Partnership ("CFD West") filed with the Boston Redevelopment Authority (the "Authority") an application, dated October 16, 1996, as amended by a First Amendment thereto, dated October 30, 1996 (collectively, the "Application"), under the provisions of said Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, both as amended (collectively, "Chapter 121A"), for approval of a project (the "Project"), more particularly described in the Application including, but not limited to, the acquisition of one or more leasehold interests in the Project Area (as defined in the Application), and construction thereon in the Project Phases (as defined in the Application) of the Hotel Project Phase (as defined in the Application), the East Office Building Project Phase (as defined in the Application) upon the East Office Building Project Area (as defined in the Application) and the West Office Building Project Phase (as defined in the Application) upon the West Office Building Project Area (as defined in the Application); and

WHEREAS, the undertaking of the Project as a Chapter 121A project was approved by vote of the Authority on November 14, 1996, adopting a Report and Decision (the "Report and Decision"); and

WHEREAS, the Mayor of the City approved the Authority's vote and related actions on November 25, 1996; and

WHEREAS, the vote of the Authority and the approval of the Mayor of the City were filed with the office of the Clerk of the City of Boston (the "City Clerk") on No-

vember 29, 1996 (the "Approval Date"), and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Hotel Operating Limited Partnership, a Massachusetts limited partnership ("Hotel Operating") and Hotel Garage Operating Limited Partnership, a Massachusetts limited partnership ("Hotel Garage Operating"), have entered into the subleases referred to in Section K(9) of the Report and Decision, with the Partnership, as of the date of this Contract (the "Effective Date");

WHEREAS, pursuant to the provisions of Chapter 121A, the City has required the Partnership to enter into this Contract with respect to the Hotel Project Phase; and

WHEREAS, contemporaneously with the execution and delivery of this Contract, CFD East is entering into a separate Section 6A Contract with respect to the East Office Building Project Phase (the "East Phase Contract") and CFD West is entering into a separate Section 6A Contract with respect to the West Office Building Project Phase (the "West Phase Contract");

NOW, THEREFORE:

1. The Partnership hereby agrees with the City that, subject to paragraph 9 hereof, all activities of the Partnership will be undertaken in accordance with the provisions of Chapter 121A as now in effect, and the Report and Decision, including but not limited to, the Minimum Standards for the Financing, Construction, Maintenance and Management of the Project referenced therein (collectively, the "Approval"), which are incorporated herein by reference. Such activities of the Partnership will include acquisition of one or more leasehold interests in the Hotel Project Area and causing the Hotel Project Phase to be developed, constructed, maintained and managed.
2. Subject to the provisions and limitations of this Contract, the Partnership will pay to the Department of Revenue, or any successor department or agency of the Commonwealth of Massachusetts ("DOR") for each calendar year during which the Partnership is subject to Chapter 121A and has the benefit of the tax exemption provided thereunder, the urban redevelopment excise required under Section 10 of Chapter 121A with respect to the Hotel Project Phase (the "Hotel Excise Tax").
3. Subject to the provisions and limitations of this Contract, the Partnership will pay to the City with respect to each calendar year during which the Partnership is subject to Chapter 121A and has the benefit of the tax exemption provided thereunder, the amount, if any (the "Hotel Differential"), by which the following amount (the "Hotel Contract Amount") exceeds the Hotel Excise Tax for such calendar year:

(A) With respect to the calendar year 1997, the greater of One Hundred Fifty Thousand Dollars (\$150,000).

- (B) With respect to the calendar years 1998 through 2002 the greater of Three Hundred Thousand Dollars (\$300,000) or two and one half percent (2 1/2%) of Hotel Operating Revenue (as hereinafter defined in this Section 3).
- (C) With respect to calendar years 2003 through 2012, three and one half percent (3 1/2%) of Hotel Operating Revenue.
- (D) With respect to calendar years 2013 through 2017, an amount equal to the taxes which would be payable pursuant to General Laws, Chapter 59 as if the Approval had not been granted. For purposes of calculating the amount due under this Section 3(D), the fair cash value, as determined by the Assessing Department, in its discretion, without any restrictions or limitations under this Contract, for the particular calendar year, shall be multiplied by the average of the tax rates applicable to hotel use, for the two fiscal tax years during the particular calendar year.

For purposes hereof, the term "Hotel Operating Revenue" shall mean collectively the following: (i) revenues actually received by the Hotel Operating from the rental of any room or suite of rooms in the Hotel Project Phase primarily designed and equipped to provide sleeping accommodations to transients (a "Guest Room"), including the stated charge for any Guest Room and any amounts added to any bill for any other item, including without limitation, any and all food or beverage charges, telephone charges, valet or laundry service charges, parking charges, or service for which a separate charge is made; (ii) revenues actually received by Hotel Operating from the sale of food or beverages in the Hotel Project Phase, whether in any restaurant, lounge, cafe or function room, or Guest Room, except for any charges included under (i); and (iii) all revenues actually received by the Hotel Garage Operating for the Hotel Project Phase, except for any parking charges included under (i).

Payment of amounts due hereunder shall be pro rated for any partial year during the periods set forth in this Section 3. Payment to the City, by and through its Collector-Treasurer, of any Hotel Differential shall be made by no later than April 1 of each calendar year in which such payment is due. Late payments shall bear interest at the rate equal to the rate charged for delinquent real estate accounts by the City.

The obligation of the Partnership to pay the Hotel Differential with respect to any such calendar shall be reduced by the amount of real estate taxes assessed upon the fee to the Hotel Project Area with respect to any such calendar year assessed pursuant to General Laws, Chapter 59, §2B, §17 of Chapter 465 of the Acts of 1956, as amended, or any successor statutes, or amounts paid with respect to the Hotel Project Area as a different or additional tax resulting from the replacement of the current method of assessment of real estate taxes, in whole or in part, by a different method or type of tax or the imposition of an additional type of tax to supplement the current method of

assessing real estate taxes (the "Hotel 2B Tax Payment"), payable after the Effective Date. If the Hotel 2B Tax Payment in any such calendar year is greater than the Hotel Differential for such year, such excess Hotel 2B Tax Payment shall be treated as an Hotel 2B Tax Payment in the next succeeding calendar years until fully recovered.

4. The Partnership shall cause to be delivered to the Assessing Department by February 10 following the end of each calendar year during which this Contract is in effect the following: (i) a statement containing a computation for the preceding calendar year under the formula set forth in Section 3 above, including without limitation the Hotel Operating Revenue, the Hotel Excise Tax, the Hotel Contract Amount, the Hotel Differential and the Hotel 2B Tax Payment, certified by authorized representatives of respectively the Partnership, the Hotel Operating and the Hotel Garage Operating; and (ii) a statement containing the gross revenues of the Partnership for the Hotel Project Phase for the preceding calendar year.

5. The Partnership shall file with the Assessing Department and the Collector-Treasurer of the City by April 1 following the end of each calendar year during which the Contract is in effect the following: (i) audited reports for respectively the Partnership, the Hotel Operating and the Hotel Garage Operating, each as prepared by a Certified Public Accountant or firm, consisting of a statement of profit and loss, a balance sheet and a statement of receipts and disbursements for the Hotel Project Phase for the preceding calendar year; and (ii) a certified copy of the Partnership's urban redevelopment excise tax return for the preceding calendar year filed with DOR for the Hotel Project Phase.

6. The Partnership hereby authorizes the Commissioner of Assessing, or his representative designated in writing, to examine from time to time all urban redevelopment excise tax returns, attachments thereto and related documents or reports filed with DOR by the Partnership. No further evidence of this authorization is required.

7. Any Overpayment (as defined below) by the Partnership with respect to any calendar year shall be refunded by the City to the Partnership as soon as is practicable upon the receipt of a written notice to the City by the Partnership of the discovery of such overpayment. In the event that the amount of any Overpayment is not refunded prior to the date on which the next payment by the Partnership becomes due under this Contract, the Partnership shall be entitled to offset the amount of such Overpayment against such next payment. For purposes of this Contract, an Overpayment by the Partnership with respect to any calendar year shall include the following, but only to the extent that the following exceed collectively the Hotel Contract Amount for that calendar year: (i)(x) amounts paid by the Partnership to the Commonwealth of Massachusetts, the City or the Authority with respect to the Hotel Project Phase pursuant to Sections 10, 15 and 18C of Chapter 121A, and (y) any amounts paid by the Partnership to the City of Boston as real estate or personal property taxes pursuant to General Laws, Chapter 59, §17 of Chapter 465 of the Acts of 1956, as amended, or any successor statutes, with respect to the Hotel Project Phase or the Hotel Project Area for

any period during which this Contract is in effect, whether assessed to the Partnership or to any predecessor in title of the Partnership other than the Hotel 2B Tax Payment; or (ii) amounts paid with respect to the Hotel Project Phase or the Hotel Project Area as a different or additional tax resulting from the replacement of the current method of assessment of real estate taxes, in whole or in part, by a different method or type of tax or the imposition of an additional type of tax to supplement the current method of assessing real estate taxes, in either case upon the Partnership, the tenant(s), subtenant(s) and/or subtenants of the Partnership, the Massachusetts Port Authority, the Hotel Project Phase, or the Hotel Project Area (such different or additional tax, for example, would include a general or a specific assessment, user fee, tax on real estate rental receipts or any other tax imposed on or required to be collected and paid over by the Partnership or the tenant(s), subtenant(s) and/or subtenants of the Partnership for the privilege of doing business in Boston, for the employ of employees in Boston or levied against real estate or upon the owners or users of real estate as such rather than persons generally for any period during which this Contract is in effect) other than the Hotel 2B Tax Payment; or (iii) any amounts paid by the Partnership to the City of Boston with respect to the Hotel Project Phase in excess of amounts actually due under this Contract due to calculation error, inaccurate information or other inadvertent mistake.

8. 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 Hotel Project Phase, as of January 1, 1998, and for each succeeding January 1 through and including January 1 of 2012, shall be an amount which, when used in the computation of the Hotel Excise Tax for or with respect to the previous calendar year, would result in an Hotel Excise Tax no greater than the Hotel Contract Amount due for such prior calendar year; provided that the statements required by Section 4 of this Contract are filed. Subject to the preceding sentence, the Assessing Department agrees to certify as to each of the foregoing fair cash value dates and amounts to the DOR and the Partnership on or before March 1 of each year during such periods, pursuant to the second paragraph of Section 10 of Chapter 121A. The Assessing Department acknowledges that the Hotel Project Phase constitutes all the real and personal property of the Hotel Project Phase for which it is required to establish a fair cash value under the provisions of Section 10 of Chapter 121A.

9. The obligations of the Partnership under this Contract and the Approval are conditioned in all respects upon (i) the acquisition of one or more leasehold interests in the Hotel Project Area by the Partnership; (ii) the issuance of all permissions, variances, exceptions, permits and licenses which may be required with respect to the construction, maintenance and management of the Hotel Project Phase, whether or not the same were specified in the Application and (iii) the Hotel Project Phase being exempt from taxation under Section 10 of Chapter 121A. The Partnership shall not be held in any way liable for delays which may occur in the construction, repair and maintenance of the Hotel Project Phase, or otherwise, by reason of scarcity of materials or labor, labor difficulties damage by fire or other casualty or any other cause beyond the Partnership's reasonable control. The Partnership agrees to use reasonable efforts to cause all such

permissions, variances, exceptions, permits and licenses to be secured and all such delays to be overcome.

10. This Contract shall continue for a term commencing on the Effective Date and terminating on the date on which the property tax exemption provided to the Partnership with respect to the Hotel Project Phase under Chapter 121A terminates. Notwithstanding the foregoing, upon the termination of this Contract as to the Hotel Project Phase, the Partnership shall pay or cause to be paid a pro-forma tax to cover the time period between such termination of this Contract and the period under which the Hotel Project Phase becomes taxable pursuant to General Laws, Chapter 59, which pro forma tax shall be equal to the Hotel Contract Amount for such period if the Hotel Project Phase had remained subject to this Contract. Such amount for the balance of the calendar year during which this Contract terminates shall be payable on or before March 15 of the year following the year in which this Contract terminates. Such amount for the first six months of the year following the year in which this Contract terminates shall be payable on or before June 30 of the year following the year in which this Contract terminates. The Hotel Project Phase thereafter shall not be subject to the obligations of Chapter 121 A, enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations of this Contract as provided in Chapter 121A; provided, however, that nothing herein shall affect (i) the continuation of the East Phase Contract or the obligations, rights and privileges of CFD East or any successor to CFD East with respect to the East Office Building Project Phase under the Approval or the East Phase Contract, or (ii) the continuation of the West Phase Contract or the obligations, rights and privileges of CFD West or any successor to CFD West with respect to the West Office Building Project Phase under the Approval or the West Phase Contract.

11. The Partnership and the City agree that, without mutual consent, any amendment subsequent to the delivery of this Contract of any of the provisions of General Laws, Chapter 121 A, or of Chapter 652 of the Acts of 1962, or of the Rules, Regulations and Standards now applicable to the Hotel Project Phase shall not affect this Contract.

12. All notices required pursuant to this Contract shall be in writing and delivered by hand or mailed postage prepaid, by registered or certified mail, addressed in the case of the City, to the Commissioner of Assessing, Assessing Department, Rm 301, One City Hall Square, Boston, Massachusetts, 02201, and in the case of respectively the Partnership, Hotel Operating, or Hotel Garage Operating to Commonwealth Flats Development Limited Partnership, c/o John Drew Company, World Trade Center/ Boston, Commonwealth Pier, Boston, Massachusetts, with a separate copy to Rubin and Rudman, 50 Rowes Wharf, Boston, Massachusetts 02110, Attn: Myrna Putziger, and in the case of either party to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or, if so mailed, two (2) days after such notice is deposited with the U.S. Postal Service.

13. The provisions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Each and every obligation and condition contained in this Contract, in the Approval or in any agreement or undertaking relating to the Approval is and shall be construed to apply separately to the owner of any separate portion of the Hotel Project Phase and a default by the owner of any separate portion of the Hotel Project Phase, under this Contract, the Approval or any such agreement or undertaking shall not constitute a default by the owner of another portion or by the Partnership. The liability of the undersigned shall be limited solely to its interest in the Hotel Project Phase and no partner, venturer, trustee, beneficiary, shareholder, officer, director of the like of the Partnership or its successors or assigns, or entity directly or indirectly holding any interests in any of the foregoing from time to time, shall have or be subject to any personal liability hereunder. After any termination under General Laws, Chapter 121A, as to the Hotel Project Phase, or transfer of the Hotel Project Phase and the leasehold interests in the Hotel Project Area to another party, or termination or transfer of any portion thereof, each in accordance with the Approval by the Authority or as otherwise approved by the Authority, the Partnership shall no longer be subject to the obligations hereof and shall have no further liability hereunder with respect to the Hotel Project Phase or such portion of the Project, as the case may be, the City agreeing to look solely to such transferee.

14. The term of this Contract shall be twenty (20) years commencing on the Effective Date, subject to any rights of the Partnership to seek termination of the status of the Project as a 121 A project under the Approval, hereunder, or at law. The Partnership may elect, as of the end of any fiscal tax year in the City of Boston ending after the fifteenth (15th) year following the Effective Date, to terminate the status of the Project as a 121A Project and shorten the period of extension of tax exemption provided under Chapter 121A and this Contract upon written notice provided to the City Clerk and to the Authority not less than thirty (30) days prior to the date upon which the assessment of property is set during such fiscal tax year, provided that the Authority shall have certified that the amenities (as defined in the Report and Decision) have been reasonably provided or are otherwise reasonably assured of being provided. A Certificate of Completion issued at any time by the Authority as contemplated in the Application and the Approval shall constitute such certification.

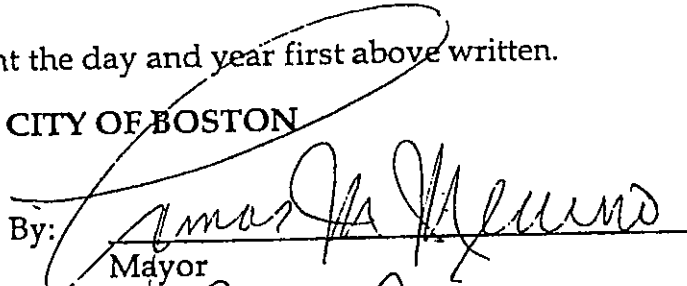
15. If any provision of this Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced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

16. No act, omission, default or failure (i) by CFD East under the East Phase Contract or otherwise with respect to the East Office Building Project Phase, or (ii) by CFD West under the West Phase Contract or otherwise with respect to the West Office Building Project Phase, shall constitute an act, omission, default or failure by the Partnership hereunder, nor affect the rights or obligations of the Partnership hereunder.

17. The City acknowledges and agrees that neither the Approval nor the terms and provisions of this Contract shall give rise to any claim for additional in lieu of tax payments with respect to the Hotel Project Phase or the Hotel Project Area against the Massachusetts Port Authority by the City under that certain Amended and Restated Payment in Lieu of Taxes Agreement, dated March 14, 1995, as a tax concession or otherwise.

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

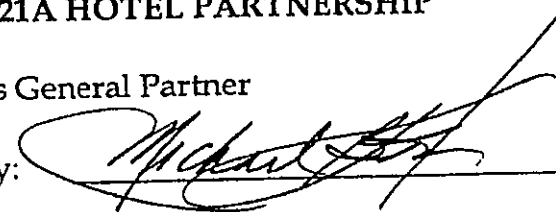
CITY OF BOSTON

By:   
Mayor

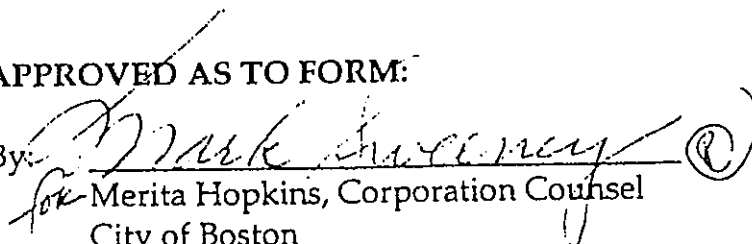
By:   
Commissioner of Assessing

COMMONWEALTH FLATS DEVELOPMENT 121A HOTEL PARTNERSHIP

By: Its General Partner

By:   
Its President

APPROVED AS TO FORM:

By:   
for Merita Hopkins, Corporation Counsel  
City of Boston

Limited Joinder

The undersigned Hotel Operating Limited Partnership, a Massachusetts limited partnership ("Hotel Operating"), and Hotel Garage Limited Partnership, a Massachusetts limited partnership ("Hotel Garage Operating"), join in the foregoing Contract solely for the purpose of agreeing to submit to the Partnership and to the Commissioner of Assessing the information required by Sections 3, 4 and 5 of the foregoing Contract, as and when required by said by Sections 3, 4 and 5. By the execution of this Contract, the City acknowledges and agrees that neither such joinder, nor the performance of the undertaking made herein, shall subject either Hotel Operating or Hotel Garage Operating to the provisions of Chapter 121A, including without limitation the provisions of



the Regulatory Agreement, of even date, between the Authority and the Partnership, and that only the Partnership is an entity subject to said Chapter 121A with respect to the Hotel Project Phase.

**HOTEL OPERATING LIMITED PARTNER-  
SHIP**

By: Its General Partner

By: 

Its President

**HOTEL GARAGE OPERATING LIMITED  
PARTNERSHIP**

By: Its General Partner

By: 

Its President