

AGREEMENT BETWEEN THE CITY OF BOSTON
AND ADAMS ORCHARD LIMITED PARTNERSHIP
GENERAL LAWS CHAPTER 121A, SECTIONS 6A AND 10

PHASE 3 OF INITIAL PROJECT
ORCHARD PARK REVITALIZATION CHAPTER 121A PROJECT

This **AGREEMENT** (the "Agreement") is made as of this 28th day of October, 1998, by and between **ADAMS ORCHARD LIMITED PARTNERSHIP**, a Massachusetts limited partnership organized under General Laws Chapter 109 and subject to General Laws Chapter 121A ("Chapter 121A") and the Acts of 1960, Chapter 652 ("Chapter 652"), both as amended to date (the "Developer" and "AOLP"), and the **CITY OF BOSTON**, a municipal corporation of the Commonwealth of Massachusetts (the "City") acting pursuant to General Laws Chapter 121A, Sections 6A and 10 and every other power and authority.

WITNESSETH THAT:

WHEREAS, an application, dated October 11, 1996 (the "Application") was filed by Orchard Park Revitalization Corporation ("OPRC") with the Boston Redevelopment Authority (the "Authority") under the provisions of Chapter 121A and Chapter 652, for approval of a project for the redevelopment of those certain parcels of land with the buildings and improvements thereon located in the Roxbury District of the City of Boston, Suffolk County, Massachusetts, commonly known as the Orchard Park public housing project, and certain additional parcels of land, as more particularly described in the Application (the "Project Area"), for residential uses; and

WHEREAS, pursuant to an application, dated September 18, 1998 (the "Phase 3 Transfer Application"), OPRC and the Developer sought approval of the Authority for the proposed transfer by OPRC to the Developer of: (1) control of a portion of the Project Area, specifically Phase 3 of the Project Area, pursuant to a ground lease, together with fee simple title to certain existing buildings located within Phase 3 of the Project Area ("Phase 3 Project Area") and (2) responsibility for development of the portion of the Phase 3 Project Area (hereafter, the "Project"); and

WHEREAS, the Authority approved the Application by a vote on November 14, 1996, adopting a Report and Decision (the "Report and Decision"); and

WHEREAS, the Authority approved the Phase 3 Transfer Application by a vote on September 29, 1998, adopting a Sixth Report and Decision Amendment (the "Sixth Amendment"); and

WHEREAS, the Mayor of the City (the "Mayor") approved the above vote of the Authority with respect to the Report and Decision on November 26, 1996; and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the Report and Decision were filed with the City Clerk of the City of Boston (the "City Clerk") on November 26, 1996, and such vote has become final and binding pursuant to the provisions of Chapters 121A and 652; and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the Sixth Amendment were filed with the City Clerk on October 14, 1998 (the "Approval Date") and such vote has become final and binding pursuant to the provisions of Chapters 121A and 652; and

WHEREAS, in accordance with the Sixth Amendment, the Developer has entered into a Regulatory Agreement with the Authority, of even date, with respect to development of the Phase 3 Project Area (the "Regulatory Agreement"); and

WHEREAS, the Developer and the City desire to enter into this Agreement pursuant to Sections 6A and 10 of Chapters 121A for payments in-lieu-of taxes with respect to the Phase 3 Project Area.

NOW, THEREFORE, the Parties hereto agree as follows:

1. AOLP shall carry out the Project in accordance with, and subject to, the provisions of Chapters 121A and 652, the provisions of the Report and Decision, as amended by the Sixth Amendment, and the provisions of the Regulatory Agreement with the Authority, as may be amended.
2. Notwithstanding the Approval Date, with respect to the Phase 3 Project Area, this Agreement shall not become effective until the date OPRC first acquires the Phase 3 Project Area from the Boston Housing Authority ("BHA")(the "Effective Date"). AOLP shall notify the Authority and the Commissioner of Assessing of the City (the "Commissioner of Assessing") of the recording date of the deed from the BHA to OPRC with respect to the Phase 3 Project Area, accompanied by copies of the deed(s) thereof.
3. AOLP shall pay to the Commonwealth of Massachusetts, its Department of Revenue or any successor department or agency ("DOR"), with respect to each calendar year, or any portion thereof, that this Agreement is in effect and applicable, the Urban Redevelopment Excise Tax required under Chapter 121A, Section 10, as amended or as may be amended in the future (the "Excise Tax").
4. AOLP shall pay to the City with regard to the Phase 3 Project Area, with respect to each calendar year or any portion thereof, that this Agreement is in effect, commencing with calendar year 1998 or a portion thereof and for each calendar year, or portion thereof, thereafter, an amount equal to ten percent (10%) of the aggregate rental income received by AOLP from tenants of the Project, exclusive

of any operating subsidies payable by the BHA to AOLP pursuant to that certain Regulatory and Operating Agreement among the BHA, AOLP and OPRC (the "BHA Regulatory Agreement") for those units occupied by public housing eligible households, the source of which operating subsidies is payments received by the BHA under any Annual Contributions Contracts, or like contracts, entered into between the BHA and the United States Department of Housing and Urban Development, or any successor department or agency ("HUD"), to the extent such amount exceeds the Excise Tax (the "Contract Amount"). The above formula for determining the Contract Amount is expressly contingent on the Project being used exclusively for multifamily residential rental housing and associated common areas and amenities, and AOLP acknowledges that any change in use which would involve any uses other than multifamily rental residential housing and associated common areas and amenities would require approval by the Authority.

The City acknowledges that, notwithstanding the fact that AOLP does not hold a fee simple interest in the land comprising the Phase 3 Project Area, AOLP's ground lease interest coupled with its fee simple ownership of the improvements thereon represents the full real estate value of Phase 3 of the Project within the Phase 3 Project Area and, accordingly, the land is not to be taxed separately from the improvements and ground lease interest under General Laws Chapter 59 ("Chapter 59").

5. Any Overpayment (as defined below) applicable to a calendar year, or portion thereof, shall at the election of the City, be either refunded or applied to reduce the payments due in succeeding calendar years, except with respect to the last calendar year, or portion thereof, in which the Phase 3 Project Area shall be subject to this Agreement, any Overpayment by AOLP shall be refunded by the City. For purposes of this Agreement, an "Overpayment" shall include the following, to the extent that they exceed collectively the Contract Amount: (i) any amounts paid by AOLP to the City as real estate taxes pursuant to Chapter 59; (ii) any amounts paid by AOLP under Chapter 121A, Section 15; and (iii) any amounts paid by AOLP to the Commonwealth of Massachusetts, or any political subdivisions thereof, under any general or special law, as an excise or tax measured by its income from or investment in the Project, not including the excise prescribed by Chapter 121A, Section 10.

6. AOLP shall file with the Commissioner of Assessing and the Authority by February 10 following the end of each calendar year during which this Agreement is in effect: (a) a statement of income and expenses for the Phase 3 Project Area during the preceding calendar year, or portion thereof; (b) a Declaration of Liability Return, a form made available by the Assessing Department; and (c) an audited report, prepared by a Certified Public Accountant, consisting of a statement of all rental and other income, operating costs, a statement of profit and loss, a balance sheet, and a statement of disposition of funds for the preceding year.

7. OPRC shall file with the Commissioner of Assessing, the Collector-Treasurer of the City ("Collector-Treasurer") and the Authority by April 1 following the end of each calendar year during which this Agreement is in effect the following: (a) a Declaration of Liability Form, a form made available by the Collector-Treasurer; and (b) a certified copy of OPRC's Excise Tax Return as submitted to DOR.

8. The maximum "fair cash value" for the Phase 3 Project Area to be determined annually by the Assessing Department and certified to DOR under Chapter 121A, Section 10, the second and seventh paragraphs thereof, commencing in calendar year 1998 or portion thereof and succeeding calendar years, or portions thereof, thereafter shall be the amount which when used in calculating the Excise Tax under the applicable statutory formula produces an Excise Tax equal to or less than ten percent (10%) of the aggregate rental payments made by the tenants of the Phase 3 Project Area exclusive of any operating subsidies payable by BHA to AOLP pursuant to the BHA Regulatory Agreement, as set forth in Section 4 of this Agreement.

Except for the period prior to the Completion of Development, in the event AOLP does not file with the Commissioner of Assessing the information set forth in Section 6 of this Agreement, the Assessing Department, at the option of its Commissioner of Assessing, may determine the "fair cash value" in its sole discretion without regard to the limitation set forth in this Section 8. Upon the request of AOLP, and based on reasonable cause, the Commissioner of Assessing may extend the time period for filing the information required by Section 6.

9. The obligations of AOLP under this Agreement are conditional in all respects upon the issuance to it of all permissions, approvals, favorable reviews, permits and licenses which may be required by City, State, Federal or other authorities with respect to the construction of the Project, whether or not the same were specified in the Application.

10. AOLP and the City agree that any amendment, subsequent to the execution of this Agreement, of Chapter 121A, except for Section 10, and Chapter 652 and the rules, regulations and standards prescribed by the Authority, which otherwise might be applicable to the Project, shall not affect the same.

11. Upon the expiration or earlier termination of the term of the Project's designation under Chapters 121A and 652 pursuant to the Report and Decision as amended, AOLP shall pay or cause to be paid a pro-forma tax to cover the time period between such expiration or termination and the date under which the Project becomes taxable pursuant to Chapter 59, which pro-forma tax shall be equal to the Contract Amount, as set forth in Section 4 of this Agreement, for such period as if the Project had remained subject to such designation. Such amount shall be payable on or before April 1 of the year following the end of the calendar year in which such

designation expires or terminates, notwithstanding the Report and Decision, Section N(12) to the contrary.

12. All notices or other communications given under this Agreement shall be in writing, signed on behalf of respectively AOLP and the City, and shall be deemed delivered if mailed postage prepaid, or by hand delivery to the principal office of the party to which it is directed, which unless otherwise designated by written notice, shall be:

AOLP:

Adams Orchard Limited Partnership
c/o Trinity Financial, Inc.
27 School street - Suite 500
Boston, MA 02108
ATTN: Patrick A.T. Lee

With a copy to :

Katharine E. Bachman, Esq.
Hale and Dorr LLP
60 State Street
Boston, MA 02109

and to:

Madison Park Development Corporation
122 DeWitt Drive
Roxbury, MA 02120
ATTN: Executive Director

City:

Commissioner of Assessing
Assessing Department
City of Boston
One City Hall Square
Boston, MA 02201

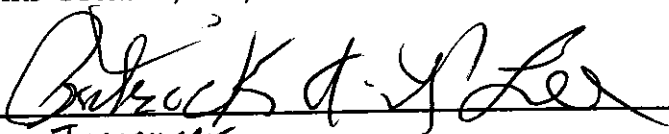
13. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. This Agreement shall commence on the Effective Date, as defined in Section 2 of the Agreement, and shall remain in effect for a period of forty (40) years after the Effective Date, unless sooner terminated.

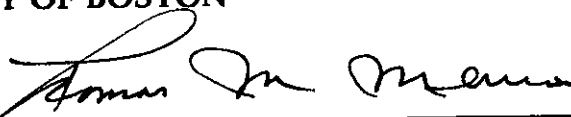
Executed as a sealed instrument as of the day and year first above written.

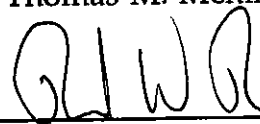
ADAMS ORCHARD LIMITED PARTNERSHIP

By: Adams Orchard, Inc., Its General Partner

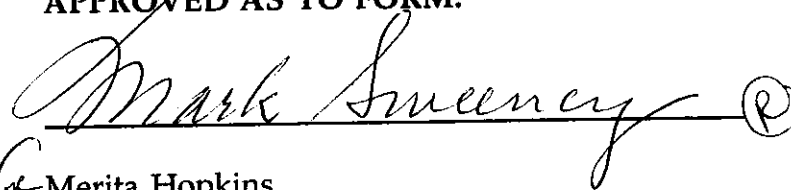
By: 
Title: Treasurer

CITY OF BOSTON

By: 
Thomas M. Menino, Mayor

By: 
Ronald W. Rakow
Commissioner of Assessing

APPROVED AS TO FORM:

 (P)
for Merita Hopkins
Corporation Counsel
City of Boston