

COPY

AGREEMENT BETWEEN THE CITY OF BOSTON
AND TRINITY ORIENT HEIGHTS PHASE TWO LIMITED PARTNERSHIP
PURSUANT TO CHAPTER 121A, SECTION 6A OF
THE MASSACHUSETTS GENERAL LAWS

ORIENT HEIGHTS CHAPTER 121A PROJECT - PHASE TWO

This **AGREEMENT** (the “Agreement”) is made as of this _____ day of _____, 2018, by and between **TRINITY ORIENT HEIGHTS PHASE TWO LIMITED PARTNERSHIP**, a Massachusetts limited partnership (the “Partnership”) organized under General Laws Chapter 109, and subject to General Laws Chapter 121A and the Acts of 1960, Chapter 652, both as amended to date (collectively, “Chapter 121A”), 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 7/13/18, 2018 (the “Application”), was filed by the Partnership with the Boston Redevelopment Authority d/b/a the Boston Planning & Development Agency (the “Agency”) under the provisions of Chapter 121A for approval of a proposed redevelopment as part of the acquisition and revitalization the existing state public housing development known as Orient Heights, in cooperation with the Boston Housing Authority (“BHA”), located in the East Boston District of the City of Boston, Suffolk County, Massachusetts, through the demolition of existing structures and development of mixed-income housing, including new replacement and non-public housing units, and associated improvements, with respect to the site of the former development; and

WHEREAS, the Orient Heights redevelopment will be implemented in phases as described in the Application; and

WHEREAS, Phase Two of the Orient Heights redevelopment which is the subject of this Agreement, consisting of the demolition of 87 existing state public housing units and construction of a combination of townhouse and midrise buildings having 88 low income housing tax credit (“LIHTC”) units, 22 of which will be Section 8 and/or Massachusetts Rental Voucher Program project-based rental subsidy units, along with the redevelopment of related pedestrian paths, open space, parking areas and related improvements (for the purpose of this Agreement, the “Project”), is the subject of a ground lease dated on or about the date hereof, executed by the BHA, as landlord, and the Partnership, as tenant (the “Ground Lease”); and

WHEREAS, the Agency approved the Application by a vote on July 12, 2018, adopting a Report and Decision (the “Report and Decision”); and

WHEREAS, the Mayor of the City (the “Mayor”) approved the above votes of the Agency on _____, 2018; and

WHEREAS, the vote of the Agency 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 _____, 2018 (the “Approval Date”), and such approval became final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, in accordance with the Report and Decision, the Partnership has entered into a Regulatory Agreement with the Agency, of even date, with respect to the development of the Project (the “Regulatory Agreement”); and

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

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

1. **Operation of the Project.** The Partnership shall carry out the Project in accordance with, and subject to, the provisions of Chapter 121A, the provisions of the Report and Decision, and the provisions of the Regulatory Agreement with the Agency, as it may be amended from time to time.
2. **Location.** The parcel that currently comprises the land that is the subject of this agreement is identified as being in Ward 1, and having a parcel number 01/02280/000. Once the subdivision plan is recorded to show Phase Two of the Orient Heights redevelopment, the ward and parcel numbers will be _____.
3. **Term.** Notwithstanding the Approval Date, this Agreement shall not become effective until the date of execution of the Ground Lease and the recording of a Notice thereof with the Suffolk County Registry of Deeds (the “Effective Date”) and shall remain in effect for a period of forty (40) years after the Effective Date, unless sooner terminated. The Partnership shall notify the Agency and the Commissioner of Assessing of the City (the “Commissioner of Assessing”) of said recording date, accompanied by a copy of the recorded document.
4. **Excise Tax Payments.** The Partnership 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 from time to time (the “Excise Tax”).
5. **6A Contract Payments.**
 - a. *Amount:* For Calendar Year 2018 the Partnership shall pay to the City Two Thousand Five Hundred (\$2,500.00) Dollars. For Calendar Year 2019 the Partnership shall pay to the City Five Thousand (\$5,000.00) Dollars. For Calendar Year 2020, the Partnership shall pay to the City the greater of Ten Thousand (\$10,000.00) Dollars or 10% of the aggregate rental income received by the Partnership from tenants of the Project, exclusive of the amounts described in clause (i) and clause (ii) in the next sentence hereof. Beginning with Calendar

Year 2021 or a portion thereof, and for each calendar year, or portion thereof, thereafter, the Partnership shall pay to the City an amount (the “Contract Amount”) equal to the sum of 10% of the aggregate rental income received by the Partnership from tenants of the Project less amounts actually paid under Section 10 of Chapter 121A to DOR; provided, however, that “the aggregate rental income received by the Partnership from tenants of the Project” shall exclude (i) any operating subsidies contractually payable by the BHA to the Partnership for those units occupied by public housing eligible households, the source of which operating subsidies is payments received by the BHA from the Commonwealth of Massachusetts Department of Housing and Community Development, and (ii) any Section 8 and/or Massachusetts Rental Voucher Program rental subsidies provided to the Partnership or the tenants of the Project. 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 the Partnership acknowledges that any change in use which would involve any uses other than the foregoing would require approval by the Agency.

- b. *Due Date:* The Partnership shall pay to the City the 6A Contract Payment on or before April 1 following the end of each calendar year for which such payment is due.
- c. *Partial Payments:* 6A Contract Payments shall be equitably pro-rated for any partial year during the term set forth in Section 3.
- d. *Late Payments:* Late 6A Contract Payments and Gap Payments (described in Section 6 below), or any portion thereof, shall bear interest at the rate allowed for in General Laws Chapter 60, as amended from time to time.

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

6. **Gap Payments.** Upon the termination of this Agreement the Partnership shall pay or cause to be paid a gap payment to cover the time period between the termination date and the date the Project becomes taxable pursuant to Chapter 59. The gap payment shall be equal to the 6A Contract Payment that would have been made for such period if the Project had remained subject to this 6A Contract. The gap payment shall be paid within six (6) months following the month in which this Agreement terminates. The Project thereafter shall not be subject to the obligations of Chapter 121A, enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations of this Agreement; provided, however, the deviations and permissions granted by the Agency pursuant to the Report and Decision shall survive such termination and shall remain in effect.

7. **Overpayments.** Any Overpayment (as defined below) shall, at the election of the City, be refunded to the Partnership or applied to reduce the 6A Contract Payment due in

succeeding calendar year or years until such Overpayment has been exhausted, and only if the Overpayment is not due to the Owner's failure to provide the financial information required by this Contract or to the Owner's intentional provision of misleading financial information. 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 the Partnership to the City as real estate taxes pursuant to Chapter 59; (ii) any amounts paid by the Partnership under Chapter 121A, Section 15; and (iii) any amounts paid by the Partnership 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.

8. **Delivery and Examination of Financial Statements.**

- a. The Partnership shall file with the Commissioner of Assessing and the Agency 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 Project during the preceding calendar year, or portion thereof, and (b) a Declaration of Liability Return Valuation, a form made available by the Assessing Department.
- b. The Partnership shall file with the Commissioner of Assessing, the Collector-Treasurer of the City ("Collector-Treasurer") and the Agency 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; (b) 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; and (c) a certified copy of the Partnership's Excise Tax Return as submitted to DOR.
- c. The Partnership shall allow the Commissioner of Assessing, or representative of the Commissioner designated in writing, to examine all Excise Tax Returns and all attachments thereto filed by the Partnership with DOR. In addition, the Partnership shall provide to the City a copy of any filing made to the DOR within 30 days of such filing. For all payments made to the DOR, the Partnership will provide a detailed breakdown indicating what portions of the payment, if any, were for penalties and interest.

9. **Determination of Fair Cash Value.** During the term specified in Section 3, the City of Boston Assessing Department shall determine the fair cash value of the Project in accordance with Section 10 of Chapter 121A; provided, however, that if the Partnership does not file with the Commissioner of Assessing the financial information set forth in Section 8 of this Agreement, the Assessing Department, at the option of the Commissioner of Assessing, may determine the "fair cash value" without regard to the limitations set forth in Section 9 of Chapter 121A. Upon the request of the Partnership, and based on reasonable cause, the Commissioner of Assessing may extend the time period for filing the information required by Section 8.

The maximum "fair cash value" for the Project 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 2018 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 the Contract Amount defined in Section 5 above.

10. **Conditions.** The obligations of the Partnership 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.

11. **Amendments to Chapter 121A or Rules and Regulations.** The Partnership and the City agree that any amendment, subsequent to the execution of this Agreement, of Chapter 121A (except for Section 10) and the rules, regulations and standards prescribed by the Agency, which otherwise might be applicable to the Project, shall not affect the same.

12. **Notices.** All notices required pursuant to this Agreement shall be in writing and delivered by hand delivery or mailed postage prepaid, by registered or certified mail, addressed as follow:

Partnership: TRINITY ORIENT HEIGHTS PHASE TWO LIMITED
PARTNERSHIP
c/o Trinity Financial, Inc.
75 Federal Street, Fourth Floor
Boston, Massachusetts 02110
Attn: General Counsel

with a copy to: Goulston & Storrs PC
400 Atlantic Avenue
Boston, Massachusetts 02110
Attn: Orient Heights Phase Two

City: City of Boston Assessing Department
One City Hall Square, Room 301
Boston, Massachusetts 02201
Attn: Commissioner of Assessing

and: RBC Tax Credit Equity, LLC
600 Superior Avenue, Suite 2300
Cleveland, OH 44114
Attn: General Counsel

with a copy to: Applegate & Thorne-Thomsen, P.C.
440 S. LaSalle St., Suite 1900

Chicago, Illinois 60605
Attn: Ben Applegate

and: Citizens Bank, N.A.
28 State Street
Boston, MA 02109
Attn: Orient Heights Phase Two

with a copy to: Hackett Feinberg P.C.
155 Federal Street, 9th Floor
Boston, Massachusetts 02110
Attn: Orient Heights Phase Two

A different address may be designated by each party by giving written notice 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. **Counterparts**. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

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

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

16. **Invalidity**. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement 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.

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

TRINITY ORIENT HEIGHTS PHASE TWO
LIMITED PARTNERSHIP,
a Massachusetts limited partnership

By: TRINITY ORIENT HEIGHTS PHASE
TWO GP LLC, a Massachusetts limited
liability company, its general partner

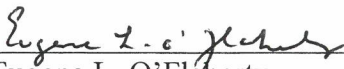
By: 
Rebecca Hemenway, Authorized Signatory

CITY OF BOSTON

By: 
Martin J. Walsh, Mayor

By: 
Gayle Willett, Commissioner of Assessing

APPROVED AS TO FORM:

By: 
Eugene L. O'Flaherty
Corporation Counsel, City of Boston 