

AGREEMENT BETWEEN THE CITY OF BOSTON
AND TRINITY EAST BOSTON THREE LIMITED PARTNERSHIP
GENERAL LAWS CHAPTER 121A, SECTIONS 6A AND 10

MAVERICK GARDENS CHAPTER 121A PROJECT-PHASE THREE

This **AGREEMENT** (the "Agreement") is made as of this 11 day of April, 2005, by and between **TRINITY EAST BOSTON THREE 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 "Partnership"), 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 April 11, 2003, as amended by an application for changes dated January 21, 2005 (as amended, the "Application") was filed by the Partnership with the Boston Redevelopment Authority (the "Authority") under the provisions of Chapter 121A and Chapter 652 for approval of a project for the acquisition and revitalization of a phase of the low income housing project known as Maverick Gardens, in cooperation with the Boston Housing Authority ("BHA"), located in the City of Boston, Suffolk County, Massachusetts, through the demolition of existing structures and development of mixed-income housing, including replacement public housing units, on the site of the former development as well as the redevelopment and revitalization of certain adjacent areas; and

WHEREAS, the Maverick Gardens project will be implemented in phases as described in the Application; and

WHEREAS, Phase Three of the Maverick Gardens project which is the subject of this Agreement (for the purpose of this Agreement, the "Project") is the subject of a Ground Lease with the BHA; and

WHEREAS, the Authority approved the Application by a vote on May 1, 2003, adopting a Report and Decision, and a vote on February 3, 2005, adopting a First Amendment to Report and Decision (together, the "Report and Decision"); and

WHEREAS, the Mayor of the City (the "Mayor") approved the above votes of the Authority on May 27, 2003 and February 7, 2005, respectively; 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 May 29, 2003 and February 10, 2005, respectively (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 Report and Decision, the Partnership has entered into a Regulatory Agreement with the Authority, 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 Chapters 121A for payments in-lieu-of taxes with respect to the Project.

NOW, THEREFORE, the Parties hereto agree as follows:

1. The Partnership 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, and the provisions of the Regulatory Agreement with the Authority, as it may be amended.

2. 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"). The Partnership shall notify the Authority and the Commissioner of Assessing of the City (the "Commissioner of Assessing") of said recording date, accompanied by a copy of the recorded document.

3. 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 or as may be amended in the future (the "Excise Tax").

4. The Partnership shall pay to the City, with respect to each calendar year or any portion thereof, that this Agreement is in effect, commencing with calendar year 2006 or a portion thereof and for each calendar year, or portion thereof, thereafter, an amount equal to the sum of 10% of the aggregate rental income received by the Partnership from tenants of the Project, exclusive of any operating subsidies payable by the BHA to the Partnership pursuant to that certain Regulatory and Operating Agreement between the Partnership and the BHA ("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 ("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 the Partnership acknowledges that any change in use which would involve any uses other than the foregoing would require approval by the Authority.

The City acknowledges that, notwithstanding the fact that the Partnership does not hold a fee simple interest in the land comprising the Project Area, 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").

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 Project shall be subject to this Agreement, any Overpayment by the Partnership 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 the Partnership to the City as real estate taxes pursuant to Chapter 59; (ii) any amounts paid by the Partnership under Chapter 121 A, 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.

6. The Partnership 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 Project during the preceding calendar year, or portion thereof, and (b) a Declaration of Liability Return, a form made available by the Assessing Department.

7. The Partnership 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; (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.

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 2005 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 4 above.

Except for the period prior to the Completion of Development, in the event the Partnership 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 the Partnership, 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 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.

10. The Partnership 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, the Partnership 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.

12. All notices or other communications given under this Agreement shall be in writing, signed on behalf of respectively the Partnership 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:

Partnership: Trinity East Boston Three Limited Partnership
40 Court Street, Suite 800
Boston, MA 02108
ATTN: Mr. James G. Keefe

With a copy to: Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Katharine E. Bachman, Esquire

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.

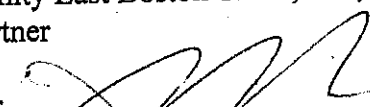
14. This Agreement shall commence on the Effective Date, as defined in Section 2 of the Agreement, and shall remain in effect for a period of forty (40) years after the Effective Date, unless sooner terminated.

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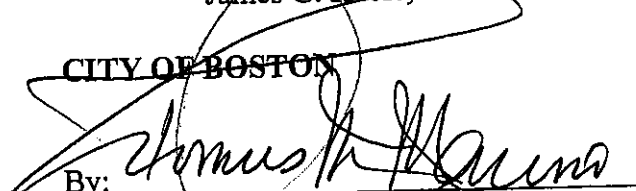
Executed as a sealed instrument as of the day and year first above written.

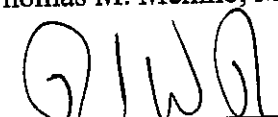
**TRINITY EAST BOSTON THREE LIMITED
PARTNERSHIP**

By: Trinity East Boston Three, Inc., Its General
Partner

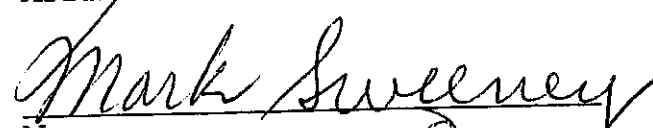
By: 
James G. Keefe, President

CITY OF BOSTON


By: Thomas M. Menino, Mayor


By: Ronald W. Rakow,
Commissioner of Assessing

APPROVED AS TO FORM:


Name: Mark Sweeney
ASST. Corporation Counsel
City of Boston 